THE GREAT SEAL OF THE STATE OF MISSISSIPPI
IN GOD WE TRUST

MISSISSIPPI CODE 1972
Annotated

Public Utilities and Carriers

Title 77

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VOLUME 17

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME SEVENTEEN

PUBLIC UTILITIES AND CARRIERS

§§ 77-1-1 to 77-15-3

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2018 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

This 2018 Replacement Volume 17 of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 1991 Replacement Volume 17, the 2000 Replacement Volume 17, and the 2009 Replacement Volume 17, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2018 Regular Legislative Session.

This volume contains the text of Title 77 of the Mississippi Code of 1972 Annotated, as amended through the 2018 Regular Legislative Sessions.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals with decision dates and decisions of the appropriate federal courts with decision dates up to July 1, 2018. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

PUBLISHER'S FOREWORD

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22906-5389.

September 2018 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Analyses
— Code Status
— Comparable Legislation from other States
— Court Rules
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If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted. Amendment notes are retained online indefinitely.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading “Judicial Decisions.” Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called “catchlines.” The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with “In general” first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

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§ 77-1-1. Creation of commission; terms, compensation and qualifications of commissioners [Repealed effective December 31, 2020].

A public service commission, hereinafter referred to in this chapter as the commission, is hereby created, consisting of three (3) members, one (1) to be elected from each of the three (3) Supreme Court districts by the qualified electors of such district. Elections for such officers shall be held in the general election in November 1959, and every four (4) years thereafter, and the terms of office of the three (3) commissioners elected at the general election in November 1959 shall expire on December 31, 1963.

The commissioners shall each receive a yearly salary fixed by the Legislature, payable monthly.

The commissioners shall each possess the qualifications prescribed for the Secretary of State. The commissioners shall not operate, own any stock in, or be in the employment of any common or contract carrier by motor vehicle, telephone company, gas or electric utility company, or any other public utility that shall come under their jurisdiction or supervision.

HISTORY:

Codes, 1942, § 7688; Laws, 1938, ch. 139; Laws, 1948, ch. 417, § 1; Laws, 1952, ch. 330, § 1; Laws, 1956, ch. 371, § 1; Laws, 1960, ch. 394, § 1; Laws, 1964, ch. 542, § 6; Laws, 1966, ch. 445, § 23; reenacted without change, Laws, 1982, ch. 389, § 1; Laws, 1989, ch. 573, § 1; reenacted, Laws, 1990, ch. 530, § 1; reenacted and amended, Laws, 1993, ch. 616, § 1; reenacted without change, Laws, 1996, ch. 526, § 1; reenacted without change, Laws, 1998, ch. 303, § 1; reenacted without change, Laws, 2002, ch. 452, § 1; reenacted without change, Laws, 2006, ch. 386, § 1; reenacted without change, Laws, 2008, ch. 406, § 1; reenacted without change, Laws, 2011, ch. 456, § 1; reenacted without change, Laws, 2012, ch. 542, § 1; reenacted without change, Laws, 2013, ch. 332, § 1; reenacted without change, Laws, 2016, ch. 437, § 1, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 1, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws, 1996, ch. 526, § 1.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 1.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Acts of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 1.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Provision that three public service commissioners shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Guaranty or surety bond required of commission members, see § 25-1-13.

Salaries of commission members, see § 25-3-31.

Deductions from salary of commission members for failure to attend commission meetings, see § 25-3-59.

Mississippi Energy Research Center, see § 57-55-15.

Requirement that certain documents be furnished to Public Service Commission regarding tender offers involving regulated public utility corporations, see § 75-72-105.

Forfeiture of office by commission member who accepts any favor from railroad or other common carrier, see § 77-1-11.

Tax on gross revenues of public utilities for payment of expenses of administration of duties imposed on commission, see § 77-3-87.

Powers and duties of the commission with respect to automatic dialing-announcing devices, see § 77-3-453.

Powers and duties of commission with respect to motor carriers, see § 77-7-13.

Prohibition under Motor Carrier Regulatory Law against commission members having any interest in any railroad, motor carrier, steamboat or canal company, see § 77-7-17.

Pipeline Safety Division of the Public Service Commission to provide administrative, investigative and legal support for the Underground Facilities Damage Prevention Board, see § 77-13-29.

Public access to records supplied by public utilities, see § 79-23-1.

JUDICIAL DECISIONS

1. In general.

Legislative act creating the Mississippi Public Service Commission and setting forth its duties and the manner in which it shall function was authorized by Const § 186, and does not unlawfully delegate legislative power or impinge on the power of the governor. Bounds v. L & A Contracting Co., 303 So. 2d 464 (Miss. 1974).

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities §§ 143, 144 et seq.

CJS.
73B C.J.S., Public Utilities §§ 288, 289 et seq.

Practice References.
Robert L. Hahne, Accounting for Public Utilities (Matthew Bender).

Taxation of Public Utilities (Matthew Bender).

§ 77-1-3. Seal [Repealed effective December 31, 2020].

The commission shall have a seal, having around the margin the words "Mississippi Public Service Commission," and in the center such device as it may select. The acts of the commission shall be authenticated by its seal.

HISTORY:
Codes, 1942, § 7695; Laws, 1938, ch. 139; reenacted without change, Laws, 1982, ch. 382, § 2; reenacted, Laws, 1990, ch. 530, § 2; reenacted without change, Laws, 1993, ch. 616, § 2; reenacted without change, Laws, 1996, ch. 526, § 2; reenacted without change, Laws, 1998, ch. 303, § 2; reenacted without change, Laws, 2002, ch. 452, § 2; reenacted without change, Laws, 2006, ch. 386, § 2; reenacted without change, Laws, 2008, ch. 406, § 2; reenacted without change, Laws, 2011, ch. 456, § 2; reenacted without change, Laws, 2012, ch. 542, § 2; reenacted without change, Laws, 2013, ch. 332, § 2; reenacted without change, Laws, 2016, ch. 437, § 2, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 2, eff from and after July 1, 2018.

Editor's Notes —
For the repeal date of this section see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 2.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 2.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 2.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —
The 2018 amendment reenacted the section without change.

§ 77-1-5. Office, meetings and minutes of commission [Repealed effective December 31, 2020].

The commission shall keep an office in the City of Jackson, which shall be kept open Monday through Friday of each week for eight (8) hours each day.

The commission shall meet at its office on the first Tuesday of each month and at such other times and places as its duties may require. The commission may sit from day to day and from time to time, and any meeting may be pretermitted not exceeding two (2) in any year.

The members of the commission shall devote their entire time to the performance of their official duties on every business day, except on the legal holidays enumerated in Section 3-3-7, Mississippi Code of 1972. However, official acts of the commission done on legal holidays shall be valid.

The commission shall keep regular minutes of its proceedings, which shall be a public record, and all orders, findings and acts of the commission shall be entered on the minutes.

Two (2) members of the commission shall be a quorum.

HISTORY:

Codes, 1942, §§ 7688, 7696; Laws, 1938, ch. 139; Laws, 1948, ch. 417, § 1; Laws, 1952, ch. 330, § 1; Laws, 1956, ch. 371, § 1; Laws, 1960, ch. 394, § 1; Laws, 1964, ch. 542, § 6; Laws, 1966, ch. 445, § 23; reenacted without change, Laws, 1982, ch. 389, § 3; reenacted, Laws, 1990, ch. 530, § 3; reenacted without change, Laws, 1993, ch. 616, § 3; reenacted without change, Laws, 1996, ch. 526, § 3; reenacted without change, Laws, 1998, ch. 303, § 3; reenacted without change, Laws, 2002, ch. 452, § 3; reenacted without change, Laws, 2006, ch. 386, § 3; reenacted without change, Laws, 2008, ch. 406, § 3; reenacted without change, Laws, 2011, ch. 456, § 3; reenacted without change, Laws, 2012, ch. 542, § 3; reenacted without change, Laws, 2013, ch. 332, § 3; reenacted without change, Laws, 2016, ch. 437, § 3, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 3, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the reenactment of this section by Laws of 1996, ch. 526, § 3.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 3.

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By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Deductions from salary of commission members for failure to attend commission meetings, see § 25-3-59.

JUDICIAL DECISIONS

1. In general.

Railroad commission failing to enter on its minutes order continuing proceeding to revise tariff charges after motions to adopt certain rates were lost for lack of seconds, finally discontinued cause, and could not revise charges at subsequent meeting without ten days' notice to railroads. Mississippi Railroad Com. v. Gulf, M. & N. R. Co., 170 Miss. 724, 155 So. 212, 1934 Miss. LEXIS 157 (Miss. 1934).

§ 77-1-6. Establishment of Public Service Commission Regulation Fund; administration; annual audit; funding of agency expenses; deposit of monies into State General Fund [Repealed effective December 31, 2020].

There is hereby established in the State Treasury a special fund to be known as the "Public Service Commission Regulation Fund." Such fund shall be the sole fund of the commission for all monies collected and deposited to the credit of or appropriated to the commission. The fund shall be administered as provided in this title and shall be audited annually by the State Auditor.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Laws, 1987, ch. 343, § 1; reenacted and amended, Laws, 1990, ch. 530, § 4; Laws, 1991, ch. 525, § 3; reenacted without change, Laws, 1993, ch. 616, § 4; Laws, reenacted without change, Laws, 1996, ch. 526, § 4; reenacted without change, Laws, 1998, ch. 303, § 4; reenacted without change, Laws, 2002, ch. 452, § 4; reenacted without change, Laws, 2006, ch. 386, § 4; reenacted without change, Laws, 2008, ch. 406, § 4; reenacted without change, Laws, 2011, ch. 456, § 4; reenacted without change, Laws, 2012, ch. 542, § 4; reenacted without change, Laws, 2013, ch. 332, § 4; reenacted without change, Laws, 2016, ch. 437, § 4; Laws, 2016, ch. 459, § 49; Laws, 2017, 1st Ex Sess, ch. 7, § 37, eff from and after passage (approved June 23, 2017); reenacted without change, Laws, 2018, ch. 402, § 4, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Section 4 of ch. 437, Laws of 2016, effective July 1, 2016 (approved April 18, 2016), amended this section. Section 49 of ch. 459, Laws of 2016, effective July 1, 2016 (approved May 6, 2016), also amended this section. As set out above, this section reflects the language of Section 49 of ch. 459, Laws of 2016, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 4.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 4.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 4.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes —

The 2017 amendment, effective June 23, 2017, added "and as determined by the State Fiscal Officer" at the end of the second paragraph.

The 2018 amendment reenacted the section without change.

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Duty of the executive secretary of the commission to deposit funds in the Public Service Commission Regulation Fund, see § 77-1-15.

Payment of salaries and expenses of various commission officers and employees out of the Public Service Commission Regulation Fund, see §§ 77-1-27, 77-3-8, 77-7-339, and 77-9-489.

Payment of salaries of employees authorized to enforce railroad laws, see § 77-1-27.

Payments to and disbursements from the Public Service Commission Regulation Fund generally, see § 77-1-29.

Levy of tax upon utilities and payment of receipts into Public Service Commission Regulation Fund, see § 77-3-87.

Additional provisions regarding audits of commission books and accounts, see § 77-3-89.

Deposit of funds collected as inspection fees and for identification plates and identification trip permits, see § 77-7-127.

Payment, out of the Public Service Commission Regulation Fund, of certain expenses of training motor carrier enforcement officers, see § 77-7-333.

Purchase by the commission of equipment necessary to enforce provisions relative to motor carriers (§§ 77-7-1 et seq.), see § 77-7-337.

Payment, out of the Public Service Commission Regulation Fund, of certain expenses of training railroad inspectors, see § 77-9-483.

Payment to the credit of the Public Service Commission Regulation Fund of receipts from taxes imposed for regulation of railroads, see § 77-9-493.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Utilities §§ 143, 144 et seq.

CJS.

73B C.J.S., Public Utilities §§ 288, 289 et seq.

§ 77-1-7. Repealed.

Repealed by Laws of 1983, ch. 467, § 32, eff from and after April 6, 1983.

[Codes 1942, § 7697; Laws, 1938, ch. 139; reenacted without change, Laws, 1982, ch. 389, § 4]

Editor's Notes —

Former § 77-1-7 required common carriers to transport commission members and employees free of charge when they were traveling on official business.

§ 77-1-9. Repealed.

Repealed by Laws of 1983, ch. 467, § 33, eff from and after July 1, 1983.

[Codes, 1942, § 7698; Laws, 1938, ch. 139; reenacted without change, Laws, 1982, ch. 389, § 5]

Editor's Notes —

Former § 77-1-9 required telegraph and telephone companies to handle all communications of the members of the public service commission, and its employees relating to official business of the commission, free of charge.

§ 77-1-11. Acceptance by or offering to commission members, candidates or employees of gifts, passes, campaign contributions or other benefits [Repealed effective December 31, 2020].

(1) It shall be unlawful for any public service commissioner, any candidate for public service commissioner, or any employee of the Public Service Commission or Public Utilities Staff to knowingly accept any gift, pass, money, campaign contribution or any emolument or other pecuniary benefit whatsoever, either directly or indirectly, from any person interested as owner, agent or representative, or from any person acting in any respect for such owner, agent or representative of any common or contract carrier by motor vehicle, telephone company, gas or electric utility company, or any other public utility that shall come under the jurisdiction or supervision of the Public Service Commission. Any person found guilty of violating the provisions of this subsection shall immediately forfeit his or her office or position and shall be fined not less than Five Thousand Dollars ($5,000.00), imprisoned in the State Penitentiary for not less than one (1) year, or both.

(2) It shall be unlawful for any person interested as owner, agent or representative, or any person acting in any respect for such owner, agent or representative of any common or contract carrier by motor vehicle, telephone company, gas or electric utility, or any other public utility that shall come under the jurisdiction or supervision of the Public Service Commission to offer any gift, pass, money, campaign contribution or any emolument or other pecuniary benefit whatsoever to any public service commissioner, any candidate for public service commissioner or any employee of the Public Service Commission or Public Utilities Staff. Any party found guilty of violating the provisions of this subsection shall be fined not less than Five Thousand Dollars ($5,000.00), or imprisoned in the State Penitentiary for not less than one (1) year, or both.

(3) For purposes of this section, the term "emolument" shall include salary, donations, contributions, loans, stock tips, vacations, trips, honorarium, directorships or consulting posts. Expenses associated with social occasions afforded public servants shall not be deemed a gift, emolument or other pecuniary benefit as defined in Section 25-4-103(k), Mississippi Code of 1972.

(4) For purposes of this section, a person who is a member of a water, gas, electric or other cooperative association regulated by the Public Service Commission shall not, by virtue of such membership, be deemed an owner, agent or representative of such association unless such person is acting in any respect for or as an owner, agent or representative of such association; nor shall a person who owns less than one-half of one percent (½ of 1%) in stock, the value thereof not to exceed Ten Thousand Dollars ($10,000.00), of any public utility that is regulated by the Public Service Commission, or of any holding company of such public utility, by virtue of such ownership, be deemed an owner, agent or representative of such public utility unless such person is acting in any respect for or as an owner, agent or representative of such public utility.

HISTORY:

Codes, 1892, § 4274; 1906, § 4827; Hemingway's 1917, § 7612; 1930, § 7026; 1942, §§ 7688, 7807; Laws, 1938, ch. 139; Laws, 1948, ch. 417, § 1; Laws, 1952, ch. 330, § 1; Laws, 1956, ch. 371, § 1; Laws, 1960, ch. 394, § 1; Laws, 1964, ch. 542, § 6; Laws, 1966, ch. 445, § 23; reenacted without change, Laws, 1982, ch. 389, § 6; reenacted and amended, Laws, 1990, ch. 530, § 5; Laws, 1991, ch. 586, § 1; reenacted and amended, Laws, 1993, ch. 616, § 5; reenacted without change, Laws, 1996, ch. 526, § 5; reenacted without change, Laws, 1998, ch. 303, § 5; reenacted without change, Laws, 2002, ch. 452, § 5; reenacted without change, Laws, 2006, ch. 386, § 5; reenacted without change, Laws, 2008, ch. 406, § 5; reenacted without change, Laws, 2011, ch. 456, § 5; reenacted without change, Laws, 2012, ch. 542, § 5; reenacted without change, Laws, 2013, ch. 332, § 5; reenacted without change, Laws, 2016, ch. 437, § 5, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 5, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 5.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 5.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws, 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws, 2006, ch. 386, § 5.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Grounds for removal of public officer from office generally, see § 25-5-1.

Criminal offenses of bribery involving public or private officers, agents, or trustees, see §§ 97-11-11, 97-11-13.

JUDICIAL DECISIONS

1. In general.

Campaign contribution to member of Mississippi Public Service Commission fit comfortably within definition of "gift" within meaning of this section, a gift being something voluntary transferred by one person to another without compensation, and state law makes acceptance of such money illegal because of its source. Court could not conceive of campaign contributions that fall outside enormous scope of statute's categories of "any gift, pass, money or any other benefits whatsoever". United States v. Snyder, 930 F.2d 1090, 1991 U.S. App. LEXIS 7343 (5th Cir. Miss.), cert. denied, 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6261 (U.S. 1991).

OPINIONS OF THE ATTORNEY GENERAL

Facts of each case would determine if lawyer or other person could be classified as representative or agent of regulated entity; fact that lawyer or engineer has at some point in his or her professional career performed professional services for regulated entity would not per se make that lawyer or engineer representative or agent of that entity. 1990 Miss. Op. Att'y Gen. 334.

The Attorney General is unable to state that Section 601 of the Federal Aviation Administration Authorization Act of 1994 preempts the enforcement of the criminal provisions of this section. 1995 Miss. Op. Att'y Gen. 7.

Under this section, a vendor of goods which sells to the public and also makes sales to a public utility, and which is not interested as an owner, agent or representative of a public utility or acting for an owner, agent or representative of a public utility, may legally contribute to a candidate for the MPSC. 1995 Miss. Op. Att'y Gen. 7.

Under this section, an attorney who performs services for a public utility, is a person ". . . interested as a . . . representative . . ." of the public utility and consequently is an individual who is prohibited from making, either directly or indirectly, a contribution to a candidate for the MPSC whether or not that attorney has multiple clients. 1995 Miss. Op. Att'y Gen. 7.

Since interstate pipeline companies do not come within the jurisdiction or supervision of the Public Service Commission, these companies or their representatives may legally make campaign contributions to Public Service Commissioners or candidates for Public Service Commissioner. See Section 77-3-5. 1995 Miss. Op. Att'y Gen. 768.

Campaign contributions legally received from regulated utility companies during a prior Mississippi House of Representatives campaign, that were not spent during that campaign, can be used in a prospective upcoming campaign for Public Service Commissioner even though they would otherwise be prohibited contributions, so long as they were made prior to any discussion or consideration of running for Public Service Commissioner and prior to becoming a candidate for the office, as described in Miss. Code Ann. § 77-1-11. 2007 Miss. Op. Att'y Gen. 71, 2007 Miss. AG LEXIS 20.

§ 77-1-13. Repealed.

Repealed by Laws of 1983, ch. 467, § 34, eff from and after April 6, 1983.

[Codes, 1942, § 7688; Laws, 1938, ch. 139; Laws, 1948, ch. 417, § 1; Laws, 1952, ch. 330, § 1; Laws, 1956, ch. 371, § 1; Laws, 1960, ch. 394, § 1; Laws, 1964, ch. 542, § 6; Laws, 1966, ch. 445, § 23; reenacted without change, Laws, 1982, ch. 389, § 7]

Editor's Notes —

Former § 77-1-13 authorized the public service commission to employ legal counsel.

§ 77-1-15. Employment and duties of executive secretary; funding of agency expenses; deposit of monies into State General Fund [Repealed effective December 31, 2020].

(1) There shall be an executive secretary of the commission, hereinafter referred to in this chapter as the secretary, to be appointed by the commission, by and with the advice and consent of the Senate, for the term of the commissioners. The secretary must have the same qualifications as the commissioners and shall be subject to the same disqualifications and to like penalties, except that he shall not be liable to impeachment. He shall receive a salary fixed by the Legislature. He shall take the oath of office and shall be removable at the pleasure of the commission, which may fill any vacancy until the Senate confirms a successor. The secretary shall make bond as provided for other state officers, in the sum of Ten Thousand Dollars ($10,000.00), conditioned upon the faithful performance of the duties of his office.

(2) The secretary shall collect all fees and penalties collected by or paid to the commission, and shall cover the same into the State Treasury; and all fees and penalties collected under the Mississippi Motor Carrier Regulatory Law of 1938 shall be covered into the Public Service Commission Regulation Fund.

(3) The secretary of the commission shall be the custodian of all records, documents, and the seal of the commission. He shall issue all citations, subpoenas and other rightful orders and documents, and perform all other duties usually required of such officer, and as required by the commission.

(4) It shall be the duty and responsibility of the secretary to supervise and manage the offices and staff of the Public Service Commission and formulate written policies and procedures for the effective and efficient operation of the office and present these policies and procedures to the board for promulgation.

(5) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(6) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Codes, 1942, § 7689; Laws, 1938, ch. 139; Laws, 1946, ch. 352, § 2; Laws, 1948, ch. 418, § 1; Laws, 1952, ch. 330, § 2; Laws, 1958, ch. 350, § 1; Laws, 1960, ch. 394, § 2; Laws, 1966, ch. 445, § 24; reenacted without change, Laws, 1982, ch. 389, § 8; Laws, 1987, ch. 343, § 2; reenacted and amended, Laws, 1990, ch. 530, § 6; reenacted without change, Laws, 1993, ch. 616, § 6; reenacted without change, Laws, 1996, ch. 526, § 6; reenacted without change, Laws, 1998, ch. 303, § 6; reenacted without change, Laws, 2002, ch. 452, § 6; reenacted without change, Laws, 2006, ch. 386, § 6; reenacted without change, Laws, 2008, ch. 406, § 6; reenacted without change, Laws, 2011, ch. 456, § 6; reenacted without change, Laws, 2012, ch. 542, § 6; reenacted without change, Laws, 2013, ch. 332, § 6; reenacted without change, Laws, 2016, ch. 437, § 6; Laws, 2016, ch. 459,

§ 50, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 6, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Section 6 of ch. 437, Laws of 2016, effective July 1, 2016 (approved April 18, 2016), amended this section. Section 50 of ch. 459, Laws of 2016, effective July 1, 2016 (approved May 6, 2016), also amended this section. As set out above, this section reflects the language of Section 50 of ch. 459, Laws of 2016, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 6.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 6.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 6.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Before whom oath of office of public officer may be taken, see § 25-1-9.

Filing of oath of office of public officer, see § 25-1-11.

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Public Service Commission Regulation Fund, see § 77-1-6.

Mississippi Motor Carrier Regulatory Law, see §§ 77-7-1 et seq.

§ 77-1-17. Employment and duties of rate expert and assistant [Repealed effective December 31, 2020].

The commission is hereby authorized to employ for the term of the commissioners a competent rate expert at a salary fixed by the commission, and an assistant rate expert at a salary fixed by the commission, for the collection of data and evidence for the use of the state in protecting the interest of the state involving duties and obligations of all common carriers, all common carriers by motor vehicle, all restricted common carriers by motor vehicle, and all contract carriers by motor vehicle, and for the establishment of proof in litigation now pending or which may hereafter be instituted.

The rate expert and his assistant shall make all needed investigations affecting rates and rate making and shall perform such other duties as the commission may find necessary for them to do in the interest of the state.

Said duties shall also include the checking and investigating of the filing of rate schedules with the commission, and making of reports to the commission respecting tariffs filed by any of the above-mentioned carriers with the commission involving the increase of any rates for movements within the State of Mississippi, and the general checking and reports to the commission affecting any rates increased from points without the State of Mississippi to points within the State of Mississippi, and from points in the State of Mississippi to points without the State of Mississippi. Said rate experts may be discharged by the commission for incompetency or other good cause, but they shall have notice and an opportunity to be heard in respect to any charge for removal.

HISTORY:

Codes, 1942, § 7690; Laws, 1938, ch. 139; Laws, 1946, ch. 352, § 3; Laws, 1948, ch. 418, § 2; Laws, 1952, ch. 330, § 3; Laws, 1958, ch. 350, § 2; Laws, 1966, ch. 445, § 25; reenacted without change, Laws, 1982, ch. 389, § 9; reenacted and amended, Laws, 1990, ch. 530, § 7; reenacted without change, Laws, 1993, ch. 616, § 7; reenacted without change, Laws, 1996, ch. 526, § 7; reenacted without change, Laws, 1998, ch. 303, § 7; reenacted the section without change, Laws, 2002, ch. 452, § 7; reenacted without change, Laws, 2006, ch. 386, § 7; reenacted without change, Laws, 2008, ch. 406, § 7; reenacted without change, Laws, 2011, ch. 456, § 7; reenacted without change, Laws, 2012, ch. 542, § 7; reenacted without change, Laws, 2013, ch. 332, § 7; reenacted without change, Laws, 2016, ch. 437, § 7, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 7, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 7.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 7.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 7.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Duty of attorney general to assist and advise commission generally, see § 7-5-49.

§ 77-1-19. Employment of personnel to implement Motor Carrier Regulatory Law [Repealed effective December 31, 2020].

The commission is authorized to employ the following additional employees to carry out and enforce the provisions of the Motor Carrier Regulatory Law of 1938:

(a) An assistant secretary and two (2) stenographer-clerks;

(b) One (1) combined bookkeeper and stenographer;

(c) One (1) stenographer competent to serve as a reporter of evidence taken before the commission; and

(d) Twelve (12) additional employees, which includes seven (7) employees to be transferred from the utility department to the motor carrier department to perform the duties of the commission imposed upon it by the provisions of said Motor Carrier Regulatory Law.

HISTORY:

Codes, 1942, § 7692; Laws, 1938, ch. 139; Laws, 1944, ch. 268, § 2; Laws, 1946, ch. 352, § 5; Laws, 1948, chs. 327, § 10, 418, § 3; Laws, 1952, ch. 330, § 4; Laws, 1958, ch. 350, § 3; Laws, 1960, ch. 394, § 3; Laws, 1966, ch. 445, § 26; Laws, 1968, ch. 535, § 1; Laws, 1974, ch. 311; Laws, 1978, ch. 377, § 1; reenacted, Laws, 1982, ch. 389, § 10; reenacted and amended, Laws, 1990, ch. 530, § 8; reenacted without change, Laws, 1996, ch. 526, § 8; reenacted without change, Laws, 1998, ch. 303, § 8; reenacted without change, Laws, 2002, ch. 452, § 8; reenacted without change, Laws, 2006, ch. 386, § 8; reenacted without change, Laws, 2008, ch. 406, § 8; reenacted without change, Laws, 2011, ch. 456, § 8; reenacted without change, Laws, 2012, ch. 542, § 8; reenacted without change, Laws, 2013, ch. 332, § 8; reenacted without change, Laws, 2016, ch. 437, § 8, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 8, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 8.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 8.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 8.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Employment of chief accountant, chief engineer, and other personnel to implement Motor Carrier Regulatory Law, see § 77-3-7.

Reporters regularly employed by commission, see § 77-3-63.

Mississippi Motor Carrier Regulatory Law, see §§ 77-7-1 et seq.

§ 77-1-21. Employment of enforcement officer and inspectors to implement Motor Carrier Regulatory Law [Repealed effective December 31, 2020].

(1) For the purpose of enforcing the provisions of the Mississippi Motor Carrier Regulatory Law of 1938, the Mississippi Department of Transportation is authorized to employ, in addition to personnel already employed by the department, one (1) chief enforcement officer and twenty-one (21) inspectors, who shall be under the management of the department. The chief enforcement officer and the inspectors shall devote their full time to the performance of their duties and shall take an oath faithfully to perform the duties of their position. The department shall require bonds to be carried on such employees as the department may deem necessary, the cost thereof to be paid by the department. The chief enforcement officer and inspectors shall be qualified by experience and training in law enforcement or investigative work, and shall attend and satisfactorily complete an appropriate course of instruction established by the Commissioner of Public Safety at the Law Enforcement Officers Training Academy. The chief enforcement officer and the inspectors referred to in this section shall be selected after an examination as to physical and mental fitness. Such employees shall be citizens of the United States and the State of Mississippi, and of good moral character. All such members of staff shall be appointed by the Mississippi Department of Transportation and shall be subject to removal at any time by the department.

(2) The Public Service Commission shall transfer all employees, equipment, inventory and resources of the commission employed and used to enforce the Motor Carrier Regulatory Law of 1938 to the Mississippi Department of Transportation on July 1, 2004. The transfer of personnel shall be commensurate with the number and classification of positions allocated to that law enforcement. The transfer also shall include direct support, clerical, data processing and communications positions allocated to that law enforcement.

(3) The Public Service Commission shall transfer to the Mississippi Department of Transportation each year the amount of funds necessary to support the law enforcement functions being performed for the commission by the department, as specified in the appropriation bill for the Public Service Commission.

(4) Any reference in any statute, rule or regulation to law enforcement duties being performed by the Public Service Commission shall be construed to mean law enforcement duties being performed for the commission by the Mississippi Department of Transportation.

HISTORY:

Codes, 1942, § 7692-01; Laws, 1958, ch. 505, § 2; Laws, 1962, ch. 512, § 1; Laws, 1966, ch. 445, § 27; Laws, 1982, ch. 389, § 11; reenacted, Laws, 1990, ch. 530, § 9; reenacted, Laws, 1993, ch. 616, § 8; reenacted without change, Laws, 1996, ch. 526, § 9; reenacted without change, Laws, 1998, ch. 303, § 9; reenacted without change, Laws, 2002, ch. 452, § 9; Laws, 2004, ch. 595, § 22; reenacted without change, Laws, 2006, ch. 386, § 9; reenacted without change, Laws, 2008, ch. 406, § 9; reenacted without change, Laws, 2011, ch. 456, § 9; reenacted without change, Laws, 2012, ch. 542, § 9; reenacted without change, Laws, 2013, ch. 332, § 9; reenacted without change, Laws, 2016, ch. 437, § 9, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 9, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993 of ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 9.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 9.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 9.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Employment of chief accountant, chief engineer, and other personnel to implement Motor Carrier Regulatory Law, see § 77-3-7.

§ 77-1-23. Repealed.

Repealed by Laws of 1992, ch. 496, § 57, eff from and after July 1, 1992.

[Codes, 1942, §§ 7806-01, 7806-02; Laws, 1970, ch. 429, §§ 1, 2; Laws, 1980, ch. 561, § 41; reenacted, Laws, 1982, ch. 389, § 12; reenacted, Laws, 1990, ch. 530, § 10, eff from and after July 1, 1990]

Editor's Notes —

Former § 77-1-23 provided for the employment of inspectors to enforce and investigate violations of railroad laws. Similar provisions may now be found in § 65-1-173.

§ 77-1-25. Use of commission property and political activity regulated [Repealed effective December 31, 2020].

No member of the staff of the commission, or any other person, shall use uniforms, material, or equipment of the commission for private or political purposes. Members of the staff of the commission may be candidates for political office but must take a leave of absence to do so. Members of the staff of the commission may take part in political campaigns other than campaigns for Public Service Commission but may not solicit or receive campaign contributions from regulated utilities. Anyone violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided by law and shall be dismissed from the staff of the commission.

HISTORY:

Codes, 1942, §§ 7692-07, 7806-07; Laws, 1958, ch. 505, § 8; Laws, 1970, ch. 429, § 7; reenacted without change, Laws, 1982, ch. 389, § 13; reenacted, Laws, 1990, ch. 530, § 11; reenacted and amended, Laws, 1993, ch. 616, § 9; reenacted without change, Laws, 1996, ch. 526, § 10; reenacted without change, Laws, 1998, ch. 303, § 10; reenacted without change, Laws, 2002, ch. 452, § 10; reenacted without change, Laws, 2006, ch. 386, § 10; reenacted without change, Laws, 2008, ch. 406, § 10; reenacted without change, Laws, 2011, ch. 456, § 10; reenacted without change, Laws, 2012, ch. 542, § 10; reenacted without change, Laws, 2013, ch. 332, § 10; reenacted without change, Laws, 2016, ch. 437, § 10, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 10, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 10.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 10.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 10.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provide:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Resignation required.

Pursuant to Miss. Code Ann. § 77-1-25, an employee of the Mississippi Public Service Commission (MPSC) does not have a constitutional right to run for the office of Public Service Commissioner while employed on the staff of the MPSC; in order to so run, he must resign his post. White v. Miss. PSC, 2006 U.S. Dist. LEXIS 1605 (N.D. Miss. Jan. 4, 2006).

In an employee's suit alleging that four officials of the Mississippi Public Service Commission violated the employee's constitutional rights by requiring him to resign before running for the office of Public Service Commissioner and by refusing to reinstate him after he lost the election, the officials were entitled to qualified immunity; because Miss. Code Ann. § 77-1-25 clearly prevented the employee from running for the office of Commissioner, the officials did not violate any of the employee's rights by not allowing him to take a leave of absence. White v. Miss. PSC, 2006 U.S. Dist. LEXIS 1605 (N.D. Miss. Jan. 4, 2006).

§ 77-1-27. Payment of salaries [Repealed effective December 31, 2020].

All commission employees provided for in this chapter, and the reasonable and necessary expenses of the administration of the duties imposed on the commission by the Motor Carrier Regulatory Law of 1938, shall be paid out of the appropriations made to defray the expenses of the commission, upon requisitions and warrants in the same manner provided by law for the disbursements of appropriations for the commission. An itemized account shall be kept of all receipts and expenditures and shall be reported to the Legislature by the commission.

HISTORY:

Codes, 1942, §§ 7691, 7693, 7806-09; Laws, 1938, ch. 139; Laws, 1944, ch. 268, §§ 1, 2; Laws, 1946, ch. 352, §§ 4, 5; Laws, 1948, ch. 327, § 11; ch. 417, § 2; Laws, 1952, ch. 330, § 5; Laws, 1956, ch. 371, §§ 2, 3; Laws, 1958, ch. 350, § 4; Laws, 1960, ch. 394, § 4; Laws, 1966, ch. 445, § 28; Laws, 1970, ch. 429, § 9; reenacted without change, Laws, 1982, ch. 389, § 14; Laws, 1987, ch. 343, § 3; reenacted and amended, Laws, 1990, ch. 530, § 12; Laws, 1991, ch. 525, § 4; Laws, 1992, ch. 496, § 59; reenacted, Laws, 1993, ch. 616, § 10; reenacted without change, Laws, 1996, ch. 526, § 11; reenacted without change, Laws, 1998, ch. 303, § 11; reenacted without change, Laws, 2002, ch. 452, § 11; reenacted without change, Laws, 2006, ch. 386, § 11; reenacted without change, Laws, 2008, ch. 406, § 11; reenacted without change, Laws, 2011, ch. 456, § 11; reenacted without change, Laws, 2012, ch. 542, § 11; reenacted without change, Laws, 2013, ch. 332, § 11; reenacted without change, Laws, 2016, ch. 437, § 11, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 11, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 11.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 11.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 11.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Public Service Commission Regulation Fund, see § 77-1-6.

Public Utilities Staff Regulation Fund, see § 77-2-19.

Motor Carrier Regulatory Law, see §§ 77-7-1 et seq.

§ 77-1-29. Payments to and disbursements from Public Service Commission Regulation Fund; funding of agency expenses; deposit of monies into State General Fund [Repealed effective December 31, 2020].

On or before the twentieth day of each calendar month, the commission shall pay into the State Treasury to the account of the "Public Service Commission Regulation Fund" all monies collected by it during the preceding calendar month, showing from whom collected, when collected and for what purposes collected. All disbursements made by the commission or from the regulation fund for any purposes, other than for salaries provided by law, shall be supported by a detailed and itemized statement approved by the commission for commission disbursements. The commission shall not expend funds from the "Public Service Commission Regulation Fund" to employ personnel whose services would duplicate services provided by any employee of the Public Utilities Staff.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Codes, 1942, § 7694; Laws, 1938, ch. 139; Laws, 1944, ch. 268, § 3; Laws, 1946, ch. 352, § 5; Laws, 1948, ch. 327, § 12; Laws, 1952, ch. 330, § 6; Laws, 1958, ch. 505, § 11; Laws, 1962, ch. 512, § 2; Laws, 1966, ch. 541, § 2; Laws, 1968, ch. 536; Laws, 1972, ch. 472, § 1; Laws, 1974, ch. 312; Laws, 1978, ch. 518, § 1; Laws, 1981, ch. 345, § 1; reenacted, Laws, 1982, ch. 389, § 15; Laws, 1983, ch. 530; Laws, 1987, ch. 343, § 4; reenacted and amended, Laws, 1990, ch. 530, § 13; Laws, 1991, ch. 525, § 5; reenacted without change, Laws, 1993, ch. 616, § 11; reenacted without change, Laws, 1996, ch. 526, § 12; reenacted without change, Laws, 1998, ch. 303, § 12; reenacted without change, Laws, 2002, ch. 452, § 12; reenacted without change, Laws, 2006, ch. 386, § 12; reenacted without change, Laws, 2008, ch. 406, § 12; reenacted without change, Laws, 2011, ch. 456, § 12; reenacted without change, Laws, 2012, ch. 542, § 12; reenacted without change, Laws, 2013, ch. 332, § 12; reenacted without change, Laws, 2016, ch. 437, § 12; Laws, 2016, ch. 459, § 51, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 12, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Section 12 of ch. 437, Laws of 2016, effective July 1, 2016 (approved April 18, 2016), amended this section. Section 51 of ch. 459, Laws of 2016, effective July 1, 2016 (approved May 6, 2016), also amended this section. As set out above, this section reflects the language of Section 51 of ch. 459, Laws of 2016, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 12.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 12.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 12.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Establishment and administration of the Public Service Commission Regulation Fund, see § 77-1-6.

§ 77-1-31. Docket of petitions and complaints [Repealed effective December 31, 2020].

The commission shall keep a docket of petitions and complaints, which shall be entered in regular order. The docket shall be called at each regular meeting of the board, and the cases thereon disposed of, or, if necessary, continued until the next meeting.

HISTORY:

Codes, 1892, § 4280; 1906, § 4832; Hemingway's 1917, § 7617; 1930, § 7031; 1942, § 7808; reenacted without change, Laws, 1982, ch. 389, § 16; reenacted, Laws, 1990, ch. 530, § 14; reenacted without change, Laws, 1993, ch. 616, § 12; reenacted without change, Laws, 1996, ch. 526, § 13; reenacted without change, Laws, 1998, ch. 303, § 13; reenacted without change, Laws, 2002, ch. 452, § 13; reenacted without change, Laws, 2006, ch. 386, § 13; reenacted without change, Laws, 2008, ch. 406, § 13; reenacted without change, Laws, 2011, ch. 456, § 13; reenacted without change, Laws, 2012, ch. 542, § 13; reenacted without change, Laws, 2013, ch. 332, § 13; reenacted without change, Laws, 2016, ch. 437, § 13, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 13, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 13.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 13.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 13.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

JUDICIAL DECISIONS

1. In general.

Railroad commission, failing to enter on its minutes order continuing proceeding to revise tariff charges after motions to adopt certain rates were lost for lack of seconds, finally discontinued cause, and could not revise charges at subsequent meeting without ten days' notice to railroads. Mississippi Railroad Com. v. Gulf, M. & N. R. Co., 170 Miss. 724, 155 So. 212, 1934 Miss. LEXIS 157 (Miss. 1934).

§ 77-1-33. Process for witnesses; penalty for failure to testify [Repealed effective December 31, 2020].

In any matter of inquiry pending before the commission or any member thereof, subpoenas for witnesses, and subpoenas duces tecum, may be issued by the secretary, under seal, or by any member without the seal, and shall be executed and returned by any sheriff, constable, or marshal, under the like penalties of law for failure to execute and return the process of the circuit court. If any person duly summoned to appear and testify before the commission, or before any one or more of the commissioners, shall fail or refuse to appear and testify, or to bring and produce, as commanded, any book, paper, or document, without a lawful excuse, or shall refuse to answer any proper question propounded to him by the commission or any of the commissioners, or if any person shall obstruct the commission, or one or more of the commissioners in the discharge of duty, or shall conduct himself in a rude, disrespectful, or disorderly manner before the commission deliberating in the discharge of duty, such witness or person shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00), or be imprisoned in the county jail for a period not exceeding six (6) months, or both.

HISTORY:

Codes, 1892, § 4285; 1906, § 4837; Hemingway's 1917, § 7622; 1930, § 7034; 1942, § 7811; reenacted without change, Laws, 1982, ch. 389, § 17; reenacted and amended, Laws, 1990, ch. 530, § 15; reenacted without change, Laws, 1993, ch. 616, § 13; reenacted without change, Laws, 1996, ch. 526, § 14; reenacted without change, Laws, 1998, ch. 303, § 14; reenacted without change, Laws, 2002, ch. 452, § 14; reenacted without change, Laws, 2006, ch. 386, § 14; reenacted without change, Laws, 2008, ch. 406, § 14; reenacted without change, Laws, 2011, ch. 456, § 14; reenacted without change, Laws, 2012, ch. 542, § 14; reenacted without change, Laws, 2013, ch. 332, § 14; reenacted without change, Laws, 2016, ch. 437, § 14, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 14, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 14.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 14.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

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Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 77-1-35. Administration of oaths; taking of affidavits; examination of witnesses; perjury [Repealed effective December 31, 2020].

The several members of the commission and the secretary may, in the discharge of their duties, administer oaths and take affidavits. The commission and each member thereof may examine witnesses under oath in all matters coming before them. If any person shall testify falsely, or make any false affidavit or oath before the commission, or before any of the commissioners, or before any officer, to any matter coming before the commission, he shall be guilty of perjury, and, upon conviction, shall be punished according to law.

HISTORY:

Codes, 1892, § 4279; 1906, § 4831; Hemingway's 1917, § 7616; 1930, § 7035; 1942, § 7812; reenacted without change, Laws, 1982, ch. 389, § 18; reenacted, Laws, 1990, ch. 530, § 16; reenacted without change, Laws, 1993, ch. 616, § 14; reenacted without change, Laws, 1996, ch. 526, § 15; reenacted without change, Laws, 1998, ch. 303, § 15; reenacted without change, Laws, 2002, ch. 452, § 15; reenacted without change, Laws, 2006, ch. 386, § 15; reenacted without change, Laws, 2008, ch. 406, § 15; reenacted without change, Laws, 2011, ch. 456, § 15; reenacted without change, Laws, 2012, ch. 542, § 15; reenacted without change, Laws, 2013, ch. 332, § 15; reenacted without change, Laws, 2016, ch. 437, § 15, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 15, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 15.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 15.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 15.

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Laws of 2011, ch. 456, § 24 provides:

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By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Punishment of persons convicted of perjury, see § 97-9-61.

§ 77-1-37. Payment of witnesses [Repealed effective December 31, 2020].

Witnesses summoned to appear before the commission shall be entitled to the same per diem and mileage as witnesses attending the circuit court. Witnesses summoned by the commission on its behalf shall be paid as are other expenditures of the commission, upon the certificate of the commission showing the amount to which such witness may be entitled. Witnesses summoned for any carrier shall be paid by it.

HISTORY:

Codes, 1892, § 4335; 1906, § 4889; Hemingway's 1917, § 7676; 1930, § 7036; 1942, § 7813; Laws, 1908, ch. 85; reenacted without change, Laws, 1982, ch. 389, § 19; reenacted, Laws, 1990, ch. 530, § 17; reenacted and amended, Laws, 1993, ch. 616, § 15; reenacted without change, Laws, 1996, ch. 526, § 16; reenacted without change, Laws, 1998, ch. 303, § 16; reenacted without change, Laws, 2002, ch. 452, § 16; reenacted without change, Laws, 2006, ch. 386, § 16; reenacted without change, Laws, 2008, ch. 406, § 16; reenacted without change, Laws, 2011, ch. 456, § 16; reenacted without change, Laws, 2012, ch. 542, § 16; reenacted without change, Laws, 2013, ch. 332, § 16; reenacted without change, Laws, 2016, ch. 437, § 16, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 16, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 16.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 16.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws, 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 16.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

Cross References —

Fees of witnesses attending circuit court, see § 25-7-47.

§ 77-1-39. Transcripts of oral testimony [Repealed effective December 31, 2020].

In all cases where the testimony of witnesses is given orally before the commission any interested party or the commission shall have the right to have said testimony taken down and transcribed by a stenographer or court reporter, who is not an employee of the commission, to be agreed upon by the parties or appointed by the commission. The stenographer or court reporter so employed shall be duly sworn and his or her certificate that the transcript of such evidence is correct together with the official certificate of any one (1) of the commissioners that he has read the same and that it is in his opinion correct shall entitle such transcript or a certified copy thereof to be received in evidence on any appeal or in any court in this state subject only to any objection that the same is not relevant or material. The stenographer or court reporter shall be paid in accordance with the provisions of Section 9-13-33. The commission shall have the right to require any party demanding an official stenographer to guarantee or prepay the costs thereof in all proper cases.

HISTORY:

Codes, 1930, § 7037; 1942, § 7814; Laws, 1926, ch. 128; reenacted without change, Laws, 1982, ch. 389, § 20; reenacted and amended, Laws, 1990, ch. 530, § 18; reenacted without change, Laws, 1993, ch. 616, § 16; reenacted without change, Laws, 1996, ch. 526, § 17; reenacted without change, Laws, 1998, ch. 303, § 17; reenacted without change, Laws, 2002, ch. 452, § 17; reenacted without change, Laws, 2006, ch. 386, § 17; reenacted without change, Laws, 2008, ch. 406, § 17; reenacted without change, Laws, 2011, ch. 456, § 17; reenacted without change, Laws, 2012, ch. 542, § 17; reenacted without change, Laws, 2013, ch. 332, § 17; reenacted without change, Laws, 2016, ch. 437, § 17, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 1, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Section 9-13-33, referred to in this section was repealed by Laws of 1991, ch. 573, § 141, eff from and after July 1, 1991.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section

5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 17.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1998, ch. 303, § 17.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 17.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provide:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

§ 77-1-41. Findings and determinations shall be in writing; proof and effect thereof [Repealed effective December 31, 2020].

All findings of the commission and the determination of every matter by it shall be made in writing and placed upon its minutes. Proof thereof shall be made by a copy of the same duly certified by the secretary under the seal of the commission. Whenever any matter has been determined by the commission, in the course of any proceeding before it the fact of such determination, duly certified, shall be received in all courts and by every officer in civil cases as prima facie evidence that such determination was right and proper. The record of the proceedings of the commission shall be deemed a public record, and shall at all reasonable times be subject to the inspection of the public.

HISTORY:

Codes, 1892, § 4284; 1906, § 4836; Hemingway's 1917, § 7621; 1930, § 7038; 1942, § 7815; reenacted without change, Laws, 1982, ch. 389, § 21; reenacted, Laws, 1990, ch. 530, § 19; reenacted without change, Laws, 1993, ch. 616, § 17; reenacted without change, Laws, 1996, ch. 526, § 18; reenacted without change, Laws, 1998, ch. 303, § 18; reenacted without change, Laws, 2002, ch. 452, § 18; reenacted without change, Laws, 2006, ch. 386, § 18; reenacted without change, Laws, 2008, ch. 406, § 18; reenacted without change, Laws, 2011, ch. 456, § 18; reenacted without change, Laws, 2012, ch. 542, § 18; reenacted without change, Laws, 2013, ch. 332, § 18; reenacted without change, Laws, 2016, ch. 437, § 18, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 18, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 18.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 18.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 18.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Judicial review.

1. In general.

The statute does not require the making of detailed findings of fact; an ultimate finding suffices. Illinois C. R. Co. v. Jackson Ready-Mix Concrete, 243 Miss. 72, 137 So. 2d 542, 1962 Miss. LEXIS 317 (Miss. 1962).

The only requirements as to the form of the commission's order are those of Code 1942, §§ 7815 and 7878. Illinois C. R. Co. v. Jackson Ready-Mix Concrete, 243 Miss. 72, 137 So. 2d 542, 1962 Miss. LEXIS 317 (Miss. 1962).

Chancellor's decree enjoining order of railroad commission is to be given same force and effect as other decrees of the lower court. Mississippi R. Com. v. Mobile & O. R. Co., 117 Miss. 257, 78 So. 153, 1918 Miss. LEXIS 173 (Miss. 1918).

2. Judicial review.

The findings of fact of the public service commission are prima facie correct, and the reviewing court cannot substitute its judgment for that of the commission or disturb its findings where there is any substantial basis in evidence for such findings or where the ruling of the commission is not capricious or arbitrary. Mississippi Public Service Com. v. Alabama G. S. R. Co., 294 So. 2d 173, 1974 Miss. LEXIS 1817 (Miss. 1974).

Under this section, the commission's findings are prima facie correct, and the reviewing court may not substitute its own judgment for that of the commission where there is a substantial basis in the evidence for such findings. Mississippi Public Service Com. v. Illinois C. R. Co., 235 Miss. 46, 108 So. 2d 573, 1959 Miss. LEXIS 401 (Miss. 1959).

Where the essential facts are not contradicted, the reviewing court may determine as a matter of law whether they are sufficient to support the order of the commission. Citizens of Stringer v. Gulf, M. & O. R. Co., 229 Miss. 1, 90 So. 2d 25, 1956 Miss. LEXIS 580 (Miss. 1956).

Where it was uncontradicted that the continuance of an agency station in an unincorporated community would be at a substantial financial loss and result in economic waste, and it clearly appeared that the substitution of a prepay station would adequately meet the reasonable requirements of public convenience and necessity, the order of the Mississippi Public Service Commission refusing to allow the railroad to substitute prepay service was not supported by substantial evidence. Citizens of Stringer v. Gulf, M. & O. R. Co., 229 Miss. 1, 90 So. 2d 25, 1956 Miss. LEXIS 580 (Miss. 1956).

Findings of fact of the public service commission are prima facie correct, and the reviewing court cannot disturb the findings, and substitute its judgment for that of the commission, where there is any substantial basis in evidence for such findings or where the ruling of the commission is not capricious or arbitrary. Tri-State Transit Co. v. Dixie Greyhound Lines, Inc., 197 Miss. 37, 19 So. 2d 441, 1944 Miss. LEXIS 273 (Miss. 1944); Citizens of Stringer v. Gulf, M. & O. R. Co., 229 Miss. 1, 90 So. 2d 25, 1956 Miss. LEXIS 580 (Miss. 1956).

The rule or principle that reviewing court cannot disturb the findings and substitute its judgment for that of the commission, where there is substantial evidence in support thereof, applies with respect to a cross-appeal from judgment of circuit court reversing judgment of the public service commission. Tri-State Transit Co. v. Dixie Greyhound Lines, Inc., 197 Miss. 37, 19 So. 2d 441, 1944 Miss. LEXIS 273 (Miss. 1944).

Order of public service commission denying an intrastate certificate to a motor carrier, which had an interstate certificate of public necessity and convenience, over the same route, where competing carrier had both intrastate as well as interstate certificates, was supported by substantial evidence, although circuit court had reversed the order to the extent of granting the certificate until the expiration of six months after the end of the war. Tri-State Transit Co. v. Dixie Greyhound Lines, Inc., 197 Miss. 37, 19 So. 2d 441, 1944 Miss. LEXIS 273 (Miss. 1944).

In determining question whether substantial evidence supported findings of public service commission, the supreme court, on appeal from judgment of circuit court reversing judgment of public service commission, is controlled by its own consideration of the testimony before the commission, and not by the opinion of the circuit court. Tri-State Transit Co. v. Dixie Greyhound Lines, Inc., 197 Miss. 37, 19 So. 2d 441, 1944 Miss. LEXIS 273 (Miss. 1944).

That a court of competent jurisdiction has the power to review any order made by an administrative commission to determine whether it is supported by substantial evidence, or is surely arbitrary and capricious, beyond the power of the commission to make, or violate some statutory or constitutional right of an interested party, is recognized by this section [Code 1942, § 7815]. Dixie Greyhound Lines, Inc. v. Mississippi Public Service Com., 190 Miss. 704, 1 So. 2d 489, 200 So. 579, 1941 Miss. LEXIS 60 (Miss. 1941).

Party attacking order of railroad commission has burden of showing unreasonableness by clear and satisfactory evidence. Mississippi R. Com. v. Mobile & O. R. Co., 115 Miss. 101, 75 So. 778, 1917 Miss. LEXIS 190 (Miss. 1917).

The findings of the railroad commission, under this section [Code 1942, § 7815], are not final, but subject to judicial review. Western Union Tel. Co. v. Mississippi R. Com., 74 Miss. 80, 21 So. 15, 1896 Miss. LEXIS 145 (Miss. 1896).

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Utilities § 181.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Forms 8-10, 26, 37, 50 et seq. (orders of commission).

CJS.

73B C.J.S., Public Utilities §§ 224-238.

§ 77-1-43. Enforcement of laws and orders, decisions and determinations of commission [Repealed effective December 31, 2020].

The commission may apply to the circuit or chancery court, by proper proceeding, for aid in the enforcement of obedience to its process, and to compel compliance with Title 77, Mississippi Code of 1972, and its lawful rules, regulations, orders, decisions, and determinations. Said courts shall have jurisdiction to grant aid and relief in such cases, subject to the right of appeal to the Supreme Court by the party aggrieved. The commission itself may, by order after notice and hearing, institute such proceedings or, at the request of the commission by order after notice and hearing, the Attorney General, or district attorney in his district, shall institute such proceedings in the name of the commission.

HISTORY:

Codes, 1892, § 4286; 1906, § 4838; Hemingway's 1917, § 7623; 1930, § 7040; 1942, §§ 7701, 7817; Laws, 1938, ch. 139; reenacted without change, Laws, 1982, ch. 389, § 22; reenacted and amended, Laws, 1990, ch. 530, § 20; reenacted without change, Laws, 1993, ch. 616, § 18; reenacted without change, Laws, 1996, ch. 526, § 19; reenacted without change, 1998, ch. 303, § 19; reenacted without change, Laws, 2002, ch. 452, § 19; reenacted without change, Laws, 2006, ch. 386, § 19; reenacted without change, Laws, 2008, ch. 406, § 19; reenacted without change, Laws, 2011, ch. 456, § 19; reenacted without change, Laws, 2012, ch. 542, § 19; reenacted without change, Laws, 2013, ch. 332, § 19; reenacted without change, Laws, 2016, ch. 437, § 19, eff from and after

July 1, 2016; reenacted and amended, Laws, 2018, ch. 402, § 19, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1996, ch. 526, § 19.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Laws of 1998, ch. 303, § 19.

The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2006, ch. 386, § 19.

On December 11, 2008, the United States Attorney General interposed no objection to the reenactment of this section by Laws of 2008, ch. 406.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted and amended the section by substituting "Title 77, Mississippi Code of 1972, and its lawful rules, regulations" for "the law and its lawful" in the first sentence and adding "The commission itself may…after notice and hearing" at the beginning of the last sentence; and deleted former (2) and (3), which read: "(2) Any action for violation of the law, or for the violation of any lawful rule, regulation or order of the commission may be instituted by the commission or by the Attorney General in any court of competent jurisdiction. (3) The remedies given by this chapter against all carriers under the supervision of the commission, are cumulative to those now in existence by law."

JUDICIAL DECISIONS

1. In general.

The commission is a "party aggrieved" within this provision, by a circuit court decision cancelling a commission order. Mississippi Public Service Com. v. Holloway Transfer & Storage Co., 247 Miss. 184, 150 So. 2d 411, 1963 Miss. LEXIS 292 (Miss. 1963).

Where the operating authority granted to a competing freight carrier authorized it to serve certain communities on the state highway and to traverse a U.S. highway but, pursuant to a judicial decision, the competing carrier, with certain exceptions, was limited to a "closed door" operation over the U.S. highway, complainants whose property rights under their franchises were adversely affected by the competing carrier's alleged day-by-day activities in unlawfully serving communities within the "closed door" area were entitled to injunctive relief, and the doctrines of exhaustion of administrative remedy, and of primary jurisdiction, were inapplicable to the case. Campbell Sixty-Six Express, Inc. v. J. & G. Express, Inc., 244 Miss. 427, 141 So. 2d 720, 1962 Miss. LEXIS 466 (Miss. 1962).

This section does not affect the jurisdiction of courts but simply directs resort to them according to the established jurisdiction. Mississippi R. Com. v. Gulf & S. I. R. Co., 78 Miss. 750, 29 So. 789, 1901 Miss. LEXIS 141 (Miss. 1901).

§ 77-1-45. Repealed.

Repealed by Laws of 1992, ch. 356, § 3, eff from and after July 1, 1992. [Codes, 1942, §§ 7683, 7699; Laws, 1938, chs. 139, 142; reenacted without change, Laws, 1982, ch. 389, § 23; reenacted, Laws, 1990, ch. 530, § 21, eff from and after July 1, 1990]

Editor's Notes —

Former § 77-1-45 provided for the method by which an appeal could be taken from a final finding, order or judgment of the Public Service Commission. Similar provisions can now be found in § 77-7-295.

§ 77-1-47. Appeal bonds; supersedeas bonds [Repealed effective December 31, 2020].

Appeals from any final finding, order or judgment of the commission shall be taken and perfected by the filing of a bond in the sum of Five Hundred Dollars ($500.00) with two (2) sureties, or with a surety company qualified to do business in Mississippi as the surety, conditioned to pay the cost of such appeal. Said bond shall be approved by the chairman or secretary of the commission, or by the judge of the court to which such appeal is taken in case the chairman or secretary of the commission refuses to approve a proper bond tendered to them within the time limited for taking appeals. The commission may grant a supersedeas bond on any appeal, in such penalty and with such surety thereon as it may deem sufficient, and may, during the pendency of any appeal, at any time, require the increase of any such supersedeas bond or additional securities thereon. The judge of the Circuit Court of Hinds County may on petition therefor by any party entitled to an appeal, presented to him within six (6) months of the date of the final finding, order, or judgment of the commission appealed from, award a writ of supersedeas to any such final finding, order, or judgment of the commission, upon the filing of a supersedeas bond in an amount to be fixed by said judge. All appeal bonds for the payment of costs, and all supersedeas bonds, shall be made payable to the state and may be enforced in the name of the state by motion or other legal proceedings or remedy in any circuit court of this state having jurisdiction of a motion or action on such bond, and the process and proceedings thereon shall be as provided by law upon bonds of like character required and taken by any court of this state. Such circuit court may render and enter like judgments upon such bonds as may, by law, be rendered and entered upon bonds of like character, and process of execution shall issue upon such judgments, and may be levied and executed as provided by law in other cases.

HISTORY:

Codes, 1942, §§ 7684, 7700; Laws, 1938, chs. 139, 142; reenacted without change, Laws, 1982, ch. 389, § 24; reenacted, Laws, 1990, ch. 530, § 22; reenacted without change, Laws, 1993, ch. 616, § 19; reenacted without change, Laws, 1996, ch. 526, § 20; reenacted without change, Laws, 1998, ch. 303, § 20; reenacted without change, Laws, 2002, ch. 452, § 20; reenacted without change, Laws, 2006, ch. 386, § 20; reenacted without change, Laws, 2008, ch. 406, § 20; reenacted without change, Laws, 2011, ch. 456, § 20; reenacted without change, Laws, 2012, ch. 542, § 20; reenacted without change, Laws, 2013, ch. 332, § 20; reenacted without change, Laws, 2016, ch. 437, § 20, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 20, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney

General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

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The United States Attorney General, by letter dated July 3, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section by Laws of 2002, ch. 452.

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By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the reenactment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment reenacted the section without change.

§ 77-1-49. Annual reports of the commission [Repealed effective December 31, 2020].

The commission shall make a report every year to the Legislature of all its acts and doings for the preceding fiscal year.

HISTORY:

Codes, 1892, § 4333; 1906, § 4887; Hemingway's 1917, § 7674; 1930, § 7041; 1942, § 7818; Laws, 1908, ch. 84; Laws, 1970, ch. 523, § 1; reenacted without change, Laws, 1982, ch. 389, § 25; reenacted, Laws, 1990, ch. 530, § 23; reenacted and amended, Laws, 1993, ch. 616, § 20; reenacted without change, Laws, 1996, ch. 526, § 21; reenacted without change, Laws, 1998, ch. 303, § 21; reenacted without change, Laws, 2002, ch. 452, § 21; reenacted without change, Laws, 2006, ch. 386, § 21; reenacted without change, Laws, 2008, ch. 406, § 21; reenacted without change, Laws, 2011, ch. 456, § 21; reenacted without change, Laws, 2012, ch. 542, § 21; reenacted without change, Laws, 2013, ch. 332, § 21; reenacted without change, Laws, 2016, ch. 437, § 21, eff from and after July 1, 2016; reenacted without change, Laws, 2018, ch. 402, § 21, eff from and after July 1, 2018.

Editor's Notes —

For the repeal date of this section, see § 77-1-51.

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

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Amendment Notes —

The 2018 amendment reenacted the section without change.

JUDICIAL DECISIONS

1. In general.

Sections 77-9-1 through 41, 77-1-23, 77-1-49 [Repealed], 77-9-257, and 77-9-265 [Repealed] vest in the Public Service Commission the authority to supervise and regulate common carrier railroads. While the line of authority between the local authorities and the Public Service Commission's regulation of railroads is not specifically defined by statute, there is a legislative intent that the Public Service Commission has general jurisdiction over common carrier railroads with an official responsibility to the public to see that railroads are operated safely, efficiently, and for the public's benefit. This responsibility which the Commission has to the entire state manifestly cannot be frustrated by any local ordinance or order, whether by a city or county. Hence, any reasonableness test of a zoning ordinance which applies to a railroad must take into account the obligation of the company to serve efficiently and economically all sections of the state dependent on it for services. Columbus & G. R. Co. v. Scales, 578 So. 2d 275, 1991 Miss. LEXIS 224 (Miss. 1991).

§ 77-1-51. Repeal of §§ 77-1-1 through 77-1-49.

Sections 77-1-1 through 77-1-49, Mississippi Code of 1972, which create the Public Service Commission and prescribe its powers and duties, shall stand repealed as of December 31, 2020.

HISTORY:

Laws, 1979, ch. 301, § 53; Laws, 1982, ch. 389, § 26; Laws, 1990, ch. 530, § 24; Laws, 1993, ch. 616, § 21; Laws, 2002, ch. 452, § 22; Laws, 2006, ch. 386, § 22; Laws, 2008, ch. 406, § 22; Laws, 2011, ch. 456, § 22; Laws, 2012, ch. 542, § 22; Laws, 2013, ch. 332, § 22; Laws, 2016, ch. 437, § 22, eff from and after July 1, 2016; Laws, 2018, ch. 402, § 22, eff from and after July 1, 2018.

Editor's Notes —

Laws of 1993, ch. 616, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On August 30, 1993, the U.S. Attorney General interposed no objection to the amendment of this section by Laws of 1993, ch. 616.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1996, ch. 526, § 22.

On April 6, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1998, ch. 303, § 22.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 386, § 22.

On December 11, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2008, ch. 406, § 22.

Laws of 2011, ch. 456, § 24 provides:

"SECTION 24. This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated July 21, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 456, Laws of 2011.

Amendment Notes —

The 2018 amendment extended the date of the repealer for §§ 77-1-1 through 77-1-49 by substituting "December 31, 2020" for "December 31, 2018."

Cross References —

Mississippi Agency Review Law, see § 5-9-13.

§ 77-1-53. Institution and conduct of proceedings for enforcement of statutes administered by commission or regulations or orders of commission; penalties; appeals; funding of agency expenses; deposit of monies into State General Fund.

(1) Whenever the commission, an employee of the commission or any employee of the public utilities staff has reason to believe that a willful and knowing violation of any statute administered by the commission or any regulation or any order of the commission has occurred, the commission may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provisions of such statute, regulation or order alleged to be violated and the facts alleged to constitute a violation thereof and shall require that the alleged violator appear before the commission at a time and place specified in the notice and answer the charges complained of. The time of appearance before the commission shall not be less than twenty (20) days from the date of the service of the complaint, unless the commission finds that the public convenience or necessity requires that such hearing be held at an earlier date.

(2) The commission shall afford an opportunity for a fair hearing to the alleged violator or violators at the time and place specified in the complaint. On the basis of the evidence produced at the hearing, the commission shall make findings of fact and conclusions of law and enter its order, which in its opinion will be in the best interests of the consuming public. Failure to appear at any such hearing, without prior authorization to do so from the commission, may result in the commission finding the alleged violator guilty of the charges complained of by default, and at such time an order may be entered, including the assessment of a penalty. The commission shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing or made written request for notice of the order. The commission may assess such penalties as provided in subsection (3) of this section.

(3) Any person found by the commission, pursuant to a hearing or by default as provided in this section, violating any statute administered by the commission, or any regulation or order of the commission in pursuance thereof, shall be subject to a civil penalty of not more than Five Thousand Dollars ($5,000.00) for each violation, to be assessed and collected by the commission. Each day that a violation continues shall constitute a separate violation. In lieu of, or in addition to, the monetary penalty, the commission, for any violation by a certificate holder, may impose a penalty in accordance with Section 77-3-21, Mississippi Code of 1972, if it finds that the violator is not rendering reasonably adequate service. Appeals from the imposition of the civil penalty may be taken to the Circuit Court of the First Judicial District of Hinds

County in the same manner as appeals from orders of the commission constituting judicial findings.

(4) All penalties collected by the commission under this section shall be deposited in the Public Service Commission Regulation Fund.

(5) No portion of any penalty or costs associated with an administrative or court proceeding which results in the assessment of a penalty against a public utility for violation of any statute administered by the commission, or any regulation or order of the commission shall be considered by the commission in fixing any rates or charges of such public utility.

(6) This section shall be in addition to any other law which provides for the imposition of penalties for the violation of any statute administered by the commission or any regulation or order of the commission.

(7) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(8) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Laws, 1991, ch. 562 § 1; Laws, 2016, ch. 459, § 52, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Public Utilities Staff, see §§ 77-2-1 et seq.

Actions to recover penalties and criminal prosecutions generally, see §§ 77-3-81 and 77-3-85.

§ 77-1-55. Commission authorized to hire attorneys or consultants to monitor, investigate and seek relief from existing or proposed interstate rates, charges, etc. [Repealed effective July 1, 2020].

(1) The Public Service Commission, with the aid and the assistance of the Public Utilities Staff, shall have the power to monitor, investigate, and seek relief in any appropriate federal forum from all existing or proposed interstate rates, charges, allocations and classifications, and all rules and practices in relation thereto promulgated and prescribed by or for any public utility as defined in Section 77-3-3(d)(i).

(2) The Public Service Commission, with the aid and the assistance of the Public Utilities Staff, may seek relief from any proposed or final decision, order, regulation, rule or law that has an impact on any existing or proposed interstate rate, charge, allocation or classification.

(3) For the purpose of this section, the Public Service Commission and the Executive Director of the Public Utilities Staff may each enter into professional

services contracts with one or more attorneys or consultants from a competent, qualified and independent firm as may be required by the commission or the executive director. Costs associated with the professional service contracts shall not exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) for each agency with respect to each rate regulated affected utility in any twelve-month period. The consultants or counsel shall submit periodically, but no less frequently than once each calendar quarter, to the executive director or the commission, as applicable, for approval of payment, itemized bills detailing the work performed. The executive director or the chairman of the commission, as applicable, shall requisition the applicable public utility to make the requisite payments to such consultants. The commission shall allow the utility to recover both the total costs the utility incurred under this section and the carrying charges for those costs through a rate rider established to recover the costs incurred and carrying charges incurred. Such rider shall include a true-up provision to ensure actual recovery of costs paid or otherwise incurred by the utility.

(4) This section shall stand repealed from and after July 1, 2020.

HISTORY:

Laws, 2012, ch. 527, § 1; Laws, 2013, ch. 332, § 23; Laws, 2016, ch. 437, § 23, eff from and after July 1, 2016; Laws, 2018, ch. 402, § 23, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error near the end of subsection (2) by inserting a comma between "charge" and "allocation." The Joint Committee ratified the correction at its August 16, 2012, meeting.

Amendment Notes —

The 2018 amendment extended the date of the repealer for the section by substituting "July 1, 2020" for "July 1, 2018" in (4).

Cross References —

Public Utilities Staff, see § 77-2-1 et seq.

CHAPTER 2.

PUBLIC UTILITIES STAFF

Sec.

77-2-1. Public utilities staff created.

77-2-3. Rights and powers of commission, its staff and public utilities staff; functions.

77-2-5. Definitions.

77-2-7. Executive director of public utilities staff; appointment; qualifications; salary.

77-2-9. Powers and duties of executive director; former staff abolished; appointment of new personnel; qualifications; duties and responsibilities of staff.

77-2-11. Former employees of public service commission, public service commission staff or public utilities staff prohibited from accepting certain employment; prohibition against offering such employment; penalties.

77-2-13. Communications regarding issues in contested proceedings prohibited; exceptions; penalties; contested proceeding defined.

77-2-15. Agreements with agencies permitted.

77-2-17. Continued force and effect of prior rules and orders; public utilities staff to have access to all data filed with commission.

77-2-19. Establishment of Public Utilities Staff Regulation Fund; administration generally; annual audits; disbursements from fund.

§ 77-2-1. Public utilities staff created.

There is hereby established a Public Utilities Staff, which shall be completely separate and independent from the Public Service Commission and the Public Service Commission staff. Such staff shall consist of the personnel positions of the executive director, the economic and planning division, legal division, engineering division and accounting division with a State Personnel Board organizational code of twenty thousand (20,000) or larger which were formerly authorized and appropriated under the provisions of Section 77-3-8, Mississippi Code of 1972. The executive director shall establish the organizational structure of the staff, and shall have the authority to create units as deemed appropriate to carry out the responsibilities of the staff. The Public Utilities Staff shall represent the broad interests of the State of Mississippi by balancing the respective concerns of the residential, commercial or industrial ratepayers, and the state and its agencies and departments, and the public utilities. The staff shall consist of a sufficient number of professional, administrative, technical, clerical and other personnel as may be necessary for the staff to perform its duties and responsibilities as hereinafter provided. All such personnel shall be competitively appointed by the executive director and shall be dismissed only for cause in accordance with the rules and regulations of the State Personnel Board. All equipment, supplies, records and any funds appropriated by the Legislature to the Public Service Commission for and on behalf of the Public Utilities Staff shall be transferred to such staff on September 1, 1990. The Public Utilities Staff shall be funded separately from the Mississippi Public Service Commission. Any appropriated funds to the Public Utilities Staff shall be maintained in an account separate from any funds of the Public Service Commission and shall never be commingled therewith.

Notwithstanding any provision of this chapter to the contrary, the personnel positions of the data processing division and the gas pipeline safety division of the Public Utilities Staff shall be the Public Service Commission staff positions authorized under Section 77-3-8, and shall be under the control and supervision of the Public Service Commission from and after March 15, 1991. However, the Public Service Commission staff shall continue to provide at no cost administrative support in the nature of data processing and bookkeeping to the Public Utilities Staff in order to avoid duplication of services.

HISTORY:

Laws, 1990, ch. 530, § 25; Laws, 1991, ch. 369, § 1, eff from and after passage (approved March 15, 1991).

Cross References —

Rights, powers and functions of the staff created in this section, see § 77-2-3.

Definition of public utilities staff, see § 77-2-5.

Tax on gross revenues of public utilities for payment of expenses of administration of duties imposed on staff, see § 77-3-87.

§ 77-2-3. Rights and powers of commission, its staff and public utilities staff; functions.

(1) The public utilities staff created pursuant to Section 77-2-1 and the Public Service Commission and commission staff shall have and possess all of the rights and powers to perform all of the duties vested by this chapter.

(2) The functions of the commission, with the aid and assistance of its staff, shall be regulatory and quasi-judicial in nature. It may make such investigations and determinations, hold such hearings, prescribe such rules and issue such orders with respect to the control and conduct of the businesses coming within its jurisdiction. It may adjudicate all proceedings brought before it in which the violation of any law or rule administered by the commission is alleged.

(3) The primary functions of the public utilities staff shall be investigative and advisory in nature.

HISTORY:

Laws, 1990, ch. 530, § 26, eff from and after September 1, 1990.

§ 77-2-5. Definitions.

For purposes of this chapter, the terms defined in this section shall have the meaning ascribed as follows:

(a) “Regulatory function” means all duties and procedures concerning the execution and enforcement of the laws, rules, orders, directives, duties and obligations imposed for the control and government of the persons or businesses regulated, together with investigative activities incident thereto and procedures inherently administrative or executive in character.

(b) “Quasi-judicial function” means the promulgation of all orders and directives of particular applicability governing the conduct of the regulated persons or businesses, together with procedures inherently judicial.

(c) “Commission” means the Mississippi Public Service Commission.

(d) “Public utilities staff” means those persons employed by the public utilities staff established in Section 77-2-1.

(e) "Public service commission staff" means those persons employed by the Public Service Commission pursuant to Section 77-3-8, Mississippi Code of 1972.

HISTORY:
Laws, 1990, ch. 530, § 27, eff from and after September 1, 1990.

§ 77-2-7. Executive director of public utilities staff; appointment; qualifications; salary.

(1) An executive director of the public utilities staff shall be appointed, on or before July 1, 1990, by the Governor, from recommended candidates to be selected by the Public Service Commission, with the advice and consent of the Senate, to serve for a term of six (6) years. On or before May 15, 1990, the Public Service Commission shall submit to the Governor a list of not less than three (3) and no more than six (6) qualified candidates for the position of executive director. The Governor shall appoint the executive director from the list of qualified candidates nominated. Within sixty (60) days prior to the expiration of the term of the executive director, the Public Service Commission shall submit the names of candidates to the Governor in the manner provided herein. Whenever any vacancy shall occur in the position of executive director the Public Service Commission shall nominate and the Governor shall appoint an executive director, as provided herein, to fill the unexpired term. The executive director shall serve at the will and pleasure of the Governor.

(2) The executive director of the public utilities staff shall hold at least a bachelors degree and shall have extensive managerial experience with a thorough knowledge of public utility economics and the principles of utility service and rate construction. The executive director of the public utilities staff shall possess the ability to analyze quantitative and qualitative data and to develop and adjust regulatory strategies or policies to attain commission objectives. The salary of the executive director shall be set by the Personnel Board and shall be such that it is comparable to salaries of those holding similar positions in other state and federal agencies and commensurate with the duties and responsibilities imposed on this official position which affects the broad interests of the State of Mississippi. Nothing herein shall be construed to prevent reappointment of the executive director for consecutive terms.

HISTORY:
Laws, 1990, ch. 530, § 28, eff from and after passage (approved April 2, 1990).

Cross References —
State Personnel Board, see § 25-9-109.

§ 77-2-9. Powers and duties of executive director; former staff abolished; appointment of new personnel; qualifications; duties and responsibilities of staff.

(1) The executive director shall have general charge of the operations and administration of the Public Utilities Staff. It shall be the duty and responsi-

bility of the executive director to supervise and manage the offices and personnel on the Public Utilities Staff and formulate written policies and procedures for the effective and efficient operation thereof. The executive director shall be responsible for hiring persons on the staff who meet established qualifications for comparable positions of duty and responsibility. The Public Utilities Staff as formerly created in Section 77-3-8, Mississippi Code of 1972, which consists of the Economic and Planning Division, Legal Division, Engineering Division, Accounting Division and Administrative Services Division, and has a State Personnel Board organizational code of twenty thousand (20,000) or larger, is abolished from and after August 31, 1990. All such former employees shall be eligible to be rehired by the executive director for positions on the Public Utilities Staff created pursuant to Section 77-2-1. Such former employees shall not, by virtue of abolishing such staff, lose any vacation or sick leave benefits previously accrued and, if rehired, shall continue vacation and sick leave as if they had not been terminated. For a period of one (1) year after July 1, 1990, the personnel actions of the Public Utilities Staff shall be exempt from State Personnel Board procedures in order to give the Public Utilities Staff flexibility in making an orderly, effective and timely transition to the mandated reorganization.

(2) The following personnel and members of the Public Utilities Staff shall be competitively appointed by the executive director and shall have at least the knowledge, skills and abilities set forth herein. These requirements shall not be waived, and possession thereof shall be certified by the State Personnel Board:

(a) A chief engineer who is a graduate licensed engineer and who has a thorough knowledge of engineering principles as applied to the design, construction, operation, maintenance and expansion of utility facilities and rate structure determination. The chief engineer shall possess a thorough knowledge of techniques and practices of public utility service and regulation and shall have the ability to evaluate same and to formulate accurate conclusions therefrom.

(b) A certified public accountant who possesses a thorough knowledge of standard accounting procedures, techniques and systems with specific reference to the utility industry. Such accountant shall be experienced in public utility accounting and shall have a thorough knowledge of the financial and organizational structure of public utility companies to include knowledge of the methods by which financing of major additions and extensions to utility operations is acquired.

(c) A director of economics and planning who holds at least a bachelor's degree in economics and possesses a thorough knowledge of the principles and techniques of economic and financial research and statistical analysis. The director of economics and planning shall have a thorough knowledge of the sources of economic, financial and statistical information and the methods of utilizing these sources, as well as considerable knowledge of capital markets with specific reference to utility financing. This employee shall be experienced in conducting analyses of the utility industry, the economy, cost of money, availability and cost of fuel and energy and other related matters within the authority of the commission.

(d) Supportive technical personnel consisting of rate analysts, accountants, inspectors and statisticians as authorized and appropriated by the Legislature.

(e) A general counsel, who shall be a member of The Mississippi Bar, shall have practiced law for a minimum of five (5) years and who shall possess considerable knowledge of utility regulation generally and of the case law, statutory law and the common law relating thereto.

(3) It shall be the duty and responsibility of the Public Utilities Staff by and through the executive director to:

(a) In uncontested matters review, investigate and make appropriate written recommendations to the commission with respect to the reasonableness of rates charged or proposed to be charged by any public utility and with respect to the consistency of such rates with the public policy of assuring an energy supply adequate to protect the public health and safety and to promote the general welfare;

(b) Review, investigate and make appropriate written recommendations to the commission with respect to the service furnished or proposed to be furnished by any utility;

(c) When deemed necessary by the executive director, in the broad public interest of the State of Mississippi, the using and consuming public, and the public utilities, make written recommendations and reports to the commission regarding all commission proceedings affecting the rates or service of any public utility;

(d) When deemed necessary by the executive director, in the broad public interest of the State of Mississippi, the using and consuming public, and the public utilities, petition the commission to initiate proceedings to review, investigate and take appropriate action with respect to the rates or service of public utilities. Receipt of such petition shall be spread on the minutes of the Public Service Commission. The commission shall, within thirty (30) days of receipt of such petition, spread upon its minutes and forward to the Executive Director of the Public Utilities Staff a response detailing actions taken or proposed to be taken;

(e) When deemed necessary by the executive director, in the broad public interest of the State of Mississippi, the using and consuming public, and the public utilities, make written recommendations and reports to the commission regarding all certificate applications filed and provide assistance to the commission in making the analysis and plans required;

(f) When deemed necessary by the executive director, in the broad public interest of the State of Mississippi, the using and consuming public, and the public utilities, make written recommendations and reports to the commission regarding all proceedings wherein any public utility proposes to reduce or abandon service to the public;

(g) Make studies with respect to standards, regulations, practices or service of any public utility; however, the Public Utilities Staff shall have no duty, responsibility or authority with respect to the enforcement of natural gas pipeline safety law, or the federal railroad safety laws, rules or regulations;

(h) When deemed necessary by the executive director, in the broad public interest of the State of Mississippi, the using and consuming public, and the public utilities, make written recommendations and reports to the commission regarding all commission proceedings with respect to transfers of franchises, mergers, consolidation and combination of public utilities;

(i) When deemed necessary by the executive director, in the broad public interest of the State of Mississippi, the using and consuming public and the public utilities, review and investigate contracts of public utilities with affiliates or subsidiaries;

(j) When deemed necessary by the executive director, in the broad public interest of the State of Mississippi, the using and consuming public, and the public utilities, advise the commission with respect to regulations and transactions;

(k) When deemed necessary by the executive director, in the broad public interest of the State of Mississippi, the using and consuming public and the public utilities, review and make recommendations to the commission on all miscellaneous uncontested filings;

(*l*) Advise the Public Service Commission in writing as to the broad public interest of the State of Mississippi, the using and consuming public, and the public utilities in all major rate cases and automatic adjustment clauses;

(m) When deemed necessary by the executive director, in the broad public interest of the State of Mississippi, the using and consuming public, and the public utilities, review and investigate the justness and reasonableness, to both the public and the public utility, of rates charged or proposed to be charged by any public utility, the rates of which are subject to regulation under the provisions of this chapter; and

(n) Accumulate evidence and other information from public utilities and other sources as required or as may be requested by the Public Service Commission.

(4) The Executive Director of the Public Utilities Staff shall employ the resources of the staff to furnish to the commission, in a timely and expeditious manner, such information and reports or conduct such investigations and provide such other assistance as may be required in order to enforce the laws providing for the regulation of public utilities.

(5) All written recommendations and reports provided to the Public Service Commission from the Public Utilities Staff shall bear the signature of the executive director, who shall maintain a record thereof, including the date such recommendation or report was submitted to the commission.

(6) In no event shall the duties and responsibilities of the Public Utilities Staff be exercised with regard to matters not within the jurisdiction and powers of the Public Service Commission.

HISTORY:

Laws, 1990, ch. 530, § 29; Laws, 2014, ch. 379, § 1, eff from and after July 1, 2014.

Cross References —

Licensing of engineers, see §§ 73-13-1 et seq.

§ 77-2-11. Former employees of public service commission, public service commission staff or public utilities staff prohibited from accepting certain employment; prohibition against offering such employment; penalties.

(1) A person who serves as (a) Commissioner of the Public Service Commission, (b) Executive Director of the public utilities staff, or (c) Executive Secretary of the commission shall not, while employed with or within one (1) year after leaving the commission or public utilities staff, accept employment with, receive compensation directly or indirectly from, or enter into a contractual relationship with an entity, or an affiliate company of an entity, that was subject to rate regulation by the commission at the time of his departure.

(2) An entity or an affiliate company of an entity that is subject to rate regulation by the commission, or a person acting on behalf of the entity or its affiliate, shall not negotiate or offer to employ or compensate a commissioner of the Public Service Commission, Executive Director of the public utilities staff or the Executive Secretary of the commission, while the person is so employed or within one (1) year after the person leaves that employment.

(3) A person who is employed with the public utilities staff shall not, within one (1) year, after leaving the public utilities staff, accept employment with, or receive compensation, directly or indirectly from the Public Service Commission or the public service commission staff.

(4) A person who is employed with the Public Service Commission or public service commission staff, shall not, within one (1) year, after leaving the commission or public service commission staff, accept employment with, or receive compensation, directly or indirectly, from the public utilities staff.

(5) A person who violates this section is subject to a civil penalty not to exceed Ten Thousand Dollars ($10,000.00) for each violation. The Attorney General may bring an action in circuit court to collect the penalties provided in this section.

HISTORY:

Laws, 1990, ch. 530, § 30, eff from and after September 1, 1990.

§ 77-2-13. Communications regarding issues in contested proceedings prohibited; exceptions; penalties; contested proceeding defined.

(1) A public service commissioner, commission or public utilities staff employee, or consultant assisting the commission in investigating, compiling, evaluating and analyzing the record shall not communicate, directly or indirectly, regarding any issue in a contested proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any commission employee or consultant who has participated in the

proceeding in a public advocacy or prosecutorial capacity, any party, his agent or other person acting on his behalf who has a direct or indirect pecuniary interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(2) A commission or public utilities staff employee, or consultant who has participated in investigating, compiling, evaluating and analyzing the record in a public advocacy or prosecutorial capacity; any party, his agent or other person acting on his behalf who has a direct or indirect pecuniary interest shall not communicate, directly or indirectly, regarding any issue in a contested proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any commissioner, employee or consultant assisting the commissioners in investigating, compiling, evaluating and analyzing the record, or any person who is or may reasonably be expected to be involved in the decisional process of the proceeding, without notice and opportunity for all parties to participate.

(3) The provisions of this section shall not apply to the following:

(a) Commissioners may communicate with one another regarding any proceeding;

(b) Commissioners, either individually or as a group, may receive aid in investigating, compiling, evaluating and analyzing the record from legal counsel, other employees or consultants of the commission or public utilities staff who have not participated in the proceeding in a public advocacy or prosecutorial capacity; and

(c) Commissioners may communicate, either individually or as a group, with the general public about matters not regarding a contested proceeding.

(4) The commission shall, in the event of a violation of this section, take whatever action is necessary to ensure that such violation does not prejudice any party or adversely affect the fairness of the proceedings to include but is not limited to the following:

(a) A public service commissioner, consultant, or employee of the commission or public utilities staff who is or may reasonably be expected to be involved in the investigation, compilation, evaluation, analysis or decisional process of a contested proceeding who receives an ex parte communication in violation of this section shall place on the public record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the ex parte communication was received. The chairman of the commission shall advise all parties that these matters have been placed on the record. Upon request made within ten (10) days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of that portion of the record for purposes of establishing a fact at issue and that portion of the record is so admitted.

(b) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a commissioner who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

(c) The commission may, in its discretion, require, to the extent consistent with the interests of justice and the policy of underlying statutes, the communicator to show cause why his claim in the contested case should not be dismissed, denied, disregarded or otherwise adversely affected as a result of such violation.

(d) Any person found guilty of violating any provision of this section shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed six (6) months or a fine not to exceed One Thousand Dollars ($1,000.00), or both.

(5) A proceeding shall be considered contested in the following:

(a) Upon the initiation of any proceedings requiring a party to show cause why any action by the commission should not be taken;

(b) In a rate change proceeding when a rate filing is suspended; and

(c) In any adversarial proceeding, when any objection or contest is filed by any party.

A contested proceeding remains pending until the commission has issued its final order, and the time to petition for reconsideration has expired or the commission has issued an order finally disposing of an application for reconsideration, whichever is later.

HISTORY:

Laws, 1990, ch. 530, § 31, eff 60 days after passage (approved April 2, 1990) [See Editor's Note, below].

Editor's Notes —

Section 42 of Chapter 530, Laws of 1990, contained effective dates for various sections of Chapter 530. There was no express effective date included for Section 31 (codified as § 77-2-13), and, by direction of the Office of the Attorney General of the State of Mississippi, an effective date of 60 days after passage of the act has been inserted in accordance with § 75 of the Mississippi Constitution of 1890 which provides "No law of a general nature, unless therein otherwise provided, shall be enforced until sixty days after its passage".

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Authority.

Because the Public Service Commission lacked authority to enter into a private settlement agreement, the agreement was unenforceable; no authority exists for the Commission to conduct public business in private. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

§ 77-2-15. Agreements with agencies permitted.

Nothing in this chapter prevents the public utilities staff, the public service commission staff or the commission from entering into agreements with other agencies to coordinate and share services, to conduct joint projects or investigations on matters within the authority and jurisdiction of the parties thereto, or to temporarily assign staff to such projects. No cooperative effort shall interfere with the independence and integrity of either the commission, the public service commission staff, the public utilities staff or any other agency that is a party.

HISTORY:
Laws, 1990, ch. 530, § 32, eff from and after July 1, 1990.

§ 77-2-17. Continued force and effect of prior rules and orders; public utilities staff to have access to all data filed with commission.

(1) All valid rules, orders and directives heretofore enforced, issued or promulgated by the Public Service Commission shall remain and continue in force and effect until repealed, modified or superseded by duly authorized rules, orders or directives of the Public Service Commission.

(2) The Public Service Commission shall ensure that the public utilities staff, upon request, shall have access to and copies of all data filed with the commission in connection with any proceeding before the commission.

HISTORY:
Laws, 1990, ch. 530, § 33, eff from and after July 1, 1990.

§ 77-2-19. Establishment of Public Utilities Staff Regulation Fund; administration generally; annual audits; disbursements from fund.

(1) There is hereby established in the State Treasury a special fund to be known as the "Public Utilities Staff Regulation Fund." Such fund shall be the sole fund of the Public Utilities Staff for all monies collected and deposited to the credit of or appropriated to the Public Utilities Staff. The fund shall be administered as provided in this section and Section 77-3-87 and shall be audited annually by the State Auditor.

(2) The Department of Finance and Administration shall advise the Public Utilities Staff of the amount of money on hand in the "Public Utilities Staff Regulation Fund" from time to time. All expenses of the Public Utilities Staff shall be paid by the State Treasurer upon warrants issued by the State Fiscal Officer, and the State Fiscal Officer shall issue his warrants upon requisitions signed by the Executive Director of the Public Utilities Staff. All disbursements made by the executive director from the fund for any purposes, other than salaries, shall be supported by a detailed and itemized statement approved by the executive director. The salaries of all employees of the Public Utilities Staff shall be paid out of the appropriations made to defray the expenses of the Public Utilities Staff upon requisitions and warrants as provided herein. Of the revenue arising from the increased regulatory tax imposed in Section 77-3-87, an amount not less than Three Hundred Fifty-four Thousand One Hundred Thirty-nine Dollars ($354,139.00) may be expended by the executive director for operating increase and salaries to fund additional

accounting and telecommunication positions for the Public Utilities Staff. An itemized account shall be kept of all receipts and expenditures and shall be reported to the Legislature by the Public Utilities Staff.

HISTORY:

Laws, 1991, ch. 525, § 2, eff from and after passage (approved April 10, 1991).

Editor's Notes —

Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Levy of tax upon utilities and payment of receipts into Public Utilities Staff Regulation Fund, see § 77-3-87.

Administration of fund, see § 77-3-89.

CHAPTER 3.

REGULATION OF PUBLIC UTILITIES

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Article 15. Mississippi Telephone Solicitation Act. 77-3-701
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ARTICLE 1.

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; RATES; SERVICE.

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77-3-2. Declaration of policy.
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77-3-97. Water conservation; submetering in multiunit dwellings.

§ 77-3-1. Application of article to municipal public utilities.

Except as otherwise provided in Section 77-3-6, any public utility as defined in paragraph (d) of Section 77-3-3, owned or operated by a municipality shall not be subject to the provisions of this article, except as to extension of utilities greater than one (1) mile outside corporate boundaries after March 29, 1956.

HISTORY:

Codes, 1942, § 7716-01; Laws, 1956, ch. 372, § 1; Laws, 1968, ch 502, § 1; Laws, 1990, ch. 455, § 2, eff from and after July 1, 1990.

Cross References —

City Utility Tax Law, see §§ 21-33-201 et seq.

Public water authorities, see §§ 51-41-1 et seq.

Mississippi Energy Research Center, see § 57-55-15.

Exemption from certificate of public convenience and necessity requirement of intrastate gas pipelines, see §§ 77-11-301 et seq.

Requirement that rural water company organized under Mississippi Nonprofit Corporation Act obtain certificate of public convenience and necessity under this article prior to constructing, operating, or maintaining water transmission or distribution system, see § 79-11-393.

JUDICIAL DECISIONS

1. In general.

Mississippi Public Service Commission did not have jurisdiction to regulate the rates charged to ratepayers on cities' gas-distribution systems because rate-setting jurisdiction was not conferred on the Commission over certain public-utility systems that were either owned or operated by municipalities, except as to extension of utilities greater than one mile outside corporate boundaries after March 29, 1956. City of Tchula v. Miss. PSC, 187 So. 3d 597, 2016 Miss. LEXIS 57 (Miss. 2016).

Although Miss. Code Ann. § 77-3-1 (Rev. 2000) provided an exemption for municipalities from the Mississippi Public Service Commission regulation for areas within one mile of their corporate limits, the statute did not grant municipalities the exclusive right to operate utilities within one mile of their corporate border nor did the statute preclude a private utility from operating within one mile of a municipality's city limits. A.B.E., Inc. v. City of Oxford, 830 So. 2d 615, 2002 Miss. LEXIS 227 (Miss. 2002).

Although a town does not need a certificate of public convenience and necessity in order to provide water service within one mile of its boundaries, a town is not thereby given an exclusive right to provide utility services within one mile of its boundaries. Town of Enterprise v. Miss. PSC, 782 So. 2d 733, 2001 Miss. LEXIS 86 (Miss. 2001).

Certificate of public convenience and necessity issued by Public Service Commission (PSC) to utility grants exclusive right to operate in designated area, so long as utility is capable of providing adequate service to customers in area covered by certificate. Cities of Oxford, Carthage, Louisville, Starkville & Tupelo v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59, 1997 Miss. LEXIS 386 (Miss. 1997).

Although a city was exempt from certification and rate regulation, this section did not permit an exempt municipal utility to intrude into a regulated utility's certified area; thus, the trial court properly enjoined a municipally-owned utility from extending electric service into newly annexed areas of the city. City of Kosciusko v. Mississippi Power & Light Co., 370 So. 2d 1339, 1979 Miss. LEXIS 2030 (Miss. 1979).

The language of subdivision H of Code 1942, § 7716-01 [Code 1972, § 77-3-1], is not a grant of an area in which a municipality is free to operate its electric lines, but, rather, is an exemption from regulation by the Capital Electric Power Asso. v. Canton, 274 So. 2d 665, 1973 Miss. LEXIS 1606 (Miss. 1973).

Although a municipal electric utility is not subject to the regulation of the Public Service Commission, and the Commission has no authority to issue a cease and desist order against the municipality, as it may do against regulated utilities, nevertheless, the right to operate a public electric utility under the authority of a certificate of public convenience and necessity issued by the Public Service Commission is a valuable right which may be protected by the courts. Capital Electric Power Asso. v. Canton, 274 So. 2d 665, 1973 Miss. LEXIS 1606 (Miss. 1973).

The invasion of an area certificated to a public utility by another utility, even though the invading utility belongs to a municipality, will subject it to a suit in the courts and to damages growing out of such invasion. Capital Electric Power Asso. v. Canton, 274 So. 2d 665, 1973 Miss. LEXIS 1606 (Miss. 1973); Jackson v. Creston Hills, Inc., 252 Miss. 564, 172 So. 2d 215, 1965 Miss. LEXIS 1130 (Miss. 1965).

Under subdivision H of this section [Code 1942, § 7716-01 (§ 77-3-1)], a municipal owned electric power system could, without being subject to the regulations of the public service commission, serve customers within an area no greater than one mile outside the corporate boundaries, and a certificated power association, although permitted to continue to serve those customers within the one mile area which it had served prior to the effective date of Code 1942, § 7716-01, was not entitled to injunctive relief to prevent the municipal electric system from expanding into the one mile area and serving customers there. East Mississippi Electric Power Asso. v. Louisville, 250 Miss. 777, 168 So. 2d 287, 1964 Miss. LEXIS 502 (Miss. 1964).

Subdivision H of this section [Code 1942, § 7716-01 (§ 77-3-1)], being in the nature of an exemption from regulation rather than a grant, did not convey to a municipal electric system the sole right to operate within an area adjacent to the corporate limits of the city and extending for a distance of one mile from such boundaries. Mississippi Power Co. v. East Mississippi Electric Power Asso., 244 Miss. 40, 140 So. 2d 286, 1962 Miss. LEXIS 421 (Miss. 1962).

A telephone and telegraph company had acquired vested rights under Chapter 38, Laws of 1886, so that Chapter 372, Laws of 1956, to the extent that it authorizes municipalities to impose charges on such company for the use of highways and streets, is unconstitutional, and remanded to District Court with directions to hold the cause while parties proceed to state tribunal for authoritative declaration of applicable state law. Southern Bell Tel. & Tel. Co. v. Meridian, 154 F. Supp. 736, 1957 U.S. Dist. LEXIS 3163 (D. Miss. 1957), aff'd, 256 F.2d 83, 1958 U.S. App. LEXIS 4302 (5th Cir. Miss. 1958).

OPINIONS OF THE ATTORNEY GENERAL

Senate Bill 3009, enrolled as Chapter 884, Local and Private Laws of Mississippi, 1988 does not exempt that portion of the City of Pontotoc gas utility system that extends more than one mile from the City of Pontotoc corporate limits from full regulation by the Mississippi Public Service Commission (MPSC), including the regulation of rates by the MPSC. 1999 Miss. Op. Att'y Gen. 437.

As Senate Bill 3009, enrolled as Chapter 884, Local and Private Laws of Mississippi, 1988 neither expressly nor impliedly provides the City of Pontotoc an exclusive right to provide gas service to all of Pontotoc County, the Mississippi Public Service Commission, in its discretion, may award a Certificate of Public Convenience and Necessity for gas service to some utility other than the City of Pontotoc for areas in Pontotoc County that lie outside of the one-mile corridor and are not being served by the City of Pontotoc. 1999 Miss. Op. Att'y Gen. 437.

A county may not provide potable water to an entity within a certificated area without the permission of the holder of the certificate of public necessity even though no compensation is received by the county for the water. 2004 Miss. Op. Att'y Gen. 569.

Under the provisions of this section, a public utility owned by the city of Holly Springs that is providing electricity to the town of Ashland is exempt from the requirement in § 77-3-17 that it pay the town two per cent of it's gross revenue from sales to residential and commercial customers within the municipality. 2004 Miss. Op. Att'y Gen. 529.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities §§ 15-20.

Practice References.
Accounting for Public Utilities (Matthew Bender).

Taxation of Public Utilities (Matthew Bender).

§ 77-3-2. Declaration of policy.

(1) The Legislature finds and determines that the rates, services and operations of public utilities as defined in this title are affected with the public interest and that the availability of an adequate and reliable service by such public utilities to the people, economy and government of the State of Mississippi is a matter of public policy. The Legislature hereby declares to be the policy of the State of Mississippi:

(a) To provide fair regulation of public utilities in the interest of the public;

(b) To promote the inherent advantage of regulated public utilities;

(c) To promote adequate, reliable and economical service to all citizens and residents of the state;

(d) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(e) To encourage and promote harmony between public utilities, their users and the environment;

(f) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of service needed for the protection of public health and safety and for the promotion of the general welfare;

(g) To cooperate with other states and the federal government in promoting and coordinating interstate and intrastate public utility service and reliability;

(h) To encourage the continued study and research for new and innovative rate-making procedures which will protect the state, the public, the ratepayers and the utilities, and where possible reduce the costs of the rate-making process; and

(i) With respect to rate-regulated public utilities, to foster, encourage, enable and facilitate economic development in the State of Mississippi, and to support and augment economic development activities, and to authorize and empower the Public Service Commission, in carrying out its statutory responsibilities, to take every opportunity to advance the economic development of the state.

(2) To these ends, therefore, authority shall be vested in the Mississippi Public Service Commission to regulate public utilities in accordance with the provisions of this title.

(3)(a) The commission shall, in addition to its other powers and duties, be authorized and empowered, in its discretion, to consider and adopt a formula type rate of return evaluation rate which may include provision for the commission to:

(i) Periodically review and adjust, if required, the utility's level of revenues based upon the actual books and records of the utility which are periodically the subject of independent audits and regulatory audits;

(ii) Review the utility's performance in certain areas or categories which may be used by the commission in the manner selected by it which may include rate incentives or penalties so long as such are found to be fair and reasonable and result in a level of revenue which is fair and reasonable; and

(iii) Use such other provisions which may be permitted by this chapter.

(b) When a formula type rate of return evaluation rate with periodic revenue adjustments is adopted by the commission, each periodic revenue adjustment will be separately considered for the purpose of determining whether a hearing is required pursuant to Section 77-3-39(1), and no such hearing shall be required if the amount of any separate periodic adjustment to the level of revenues of the utility is not a "major change" as defined in Section 77-3-37(8).

(c) In administering any such formula type rate of return evaluation rate, the following procedures shall be observed by the commission:

(i) Each periodic evaluation shall be supported with a sworn filing by the utility incorporating the data specified in the formula rate adopted by the commission, and such data shall be verified by the commission; and

(ii) A hearing shall be required, as provided by law, to determine compliance with the formula rate plan and the accuracy of the data prior to any change in the level of revenues if the cumulative change in any calendar year exceeds the greater of Two Hundred Thousand Dollars ($200,000.00) or four percent (4%) of the annual revenues of the utility.

(d) The requirements of paragraphs (a), (b) and (c) of this subsection and other applicable provisions of Title 77, Chapter 3, Article 1, Mississippi Code of 1972, which are observed by the commission in administering such rate, are hereby declared to be procedural but are not required to be included in the rate itself.

(4) It is the intention of the Legislature to validate, retroactively to its initial adoption by the commission, any formula type rate, including any revenue adjustments effected pursuant thereto, which has heretofore been adopted by the commission. For the purposes of the retroactive validation and the administration of any formula type rate heretofore adopted by the commission, should the provisions of Title 77, Chapter 3, Article 1, Mississippi Code of 1972, conflict with any provisions of such formula type rate, Title 77, Chapter 3, Article 1, Mississippi Code of 1972, shall be interpreted to prevail and the formula type rate shall hereafter be administered or revised to conform to Title 77, Chapter 3, Article 1, Mississippi Code of 1972; provided,

however, such conflict, if any, shall not be held to invalidate the retroactive effect of this section upon such rate.

HISTORY:

Laws, 1983, ch. 467, § 3; Laws, 1989, ch. 304, § 1; Laws, 1990 Ex Sess, ch. 48, § 1; Laws, 2015, ch. 360, § 2, eff from and after July 1, 2015.

Cross References —

Applicability of the policy objectives identified in this section to generation and transmission cooperatives, see § 77-5-256.

JUDICIAL DECISIONS

1. In general.

The Mississippi Public Service Commission has the duty, authority, and therefore jurisdiction, over public utilities who come into the state of Mississippi and attempt to invoke the statutory right of eminent domain. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

A New York corporation which provided long distance telephone service across the country was required to comply with state law and, as a condition precedent to the exercise of the statutory right of eminent domain pursuant to § 77-9-717, to submit to the jurisdiction of the Mississippi Public Service Commission and obtain the following: (1) a determination that the telephone company qualified as an entity to which the legislature had granted the power of eminent domain pursuant to §§ 11-27-1 and 77-9-717; (2) a determination that the telephone company had complied with state law in invoking the statutory power of eminent domain; and (3) a certificate of public convenience and necessity for the particular taking in question. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

RESEARCH REFERENCES

Law Reviews.

1989 Mississippi Supreme Court Review: Mississippi Public Service Commission. 59 Miss. L. J. 792.

§ 77-3-3. Definitions.

As used in this chapter:

(a) The term "corporation" includes a private or public corporation, a municipality, an association, a joint-stock association or a business trust.

(b) The term "person" includes a natural person, a partnership of two (2) or more persons having a joint or common interest, a cooperative, nonprofit, limited dividend or mutual association, a corporation, or any other legal entity.

(c) The term "municipality" includes any incorporated city, town or village.

(d) The term "public utility" includes persons and corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this state equipment or facilities for:

(i) The generation, manufacture, transmission or distribution of electricity to or for the public for compensation;

(ii) The transmission, sale, sale for resale, or distribution of natural, artificial, or mixed natural and artificial gas to the public for compensation by means of transportation, transmission, or distribution facilities and equipment located within this state; however, the term shall not include the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, or the distribution or sale of liquefied petroleum gas or the sale to the ultimate consumer of natural gas for use as a motor vehicle fuel;

(iii) The transmission, conveyance or reception of any message over wire, of writing, signs, signals, pictures and sounds of all kinds by or for the public, where such service is offered to the public for compensation, and the furnishing, or the furnishing and maintenance, of equipment or facilities to the public, for compensation, for use as a private communications system or part thereof; however, no person or corporation not otherwise a public utility within the meaning of this chapter shall be deemed such solely because of engaging in this state in the furnishing, for private use as last aforementioned, and moreover, nothing in this chapter shall be construed to apply to television stations, radio stations, community television antenna services, video services, voice over Internet protocol services ("VoIP"), any wireless services including commercial mobile services, Internet protocol ("IP") - enabled services or broadband services; and

(iv) The transmission, distribution, sale or resale of water to the public for compensation, or the collection, transmission, treatment or disposal of sewage, or otherwise operating a sewage disposal service, to or for the public for compensation.

The term "public utility" shall not include any person not otherwise a public utility, who furnishes the services or commodity described in this paragraph only to himself, his employees or tenants as an incident of such employee service or tenancy, if such services are not sold or resold to such tenants or employees on a metered or consumption basis other than the submetering authorized under Section 77-3-97.

A public utility's business other than of the character defined in subparagraphs (i) through (iv) of this paragraph is not subject to the provisions of this chapter.

(e) The term "rate" means and includes every compensation, charge, fare, toll, customer deposit, rental and classification, or the formula or method by which such may be determined, or any of them, demanded, observed, charged or collected by any public utility for any service, product or commodity described in this section, offered by it to the public, and any rules, regulations, practices or contracts relating to any such compensation, charge, fare, toll, rental or classification; however, the term "rate" shall not include charges for electrical current furnished, delivered or sold by one public utility to another for resale.

(f) The word "commission" shall refer to the Public Service Commission of the State of Mississippi, as now existing, unless otherwise indicated.

(g) The term "affiliated interest" or "affiliate" includes:

(i) Any person or corporation owning or holding, directly or indirectly, twenty-five percent (25%) or more of the voting securities of a public utility;

(ii) Any person or corporation in any chain of successive ownership of twenty-five percent (25%) or more of the voting securities of a public utility;

(iii) Any corporation of which fifteen percent (15%) or more of the voting securities is owned or controlled, directly or indirectly, by a public utility;

(iv) Any corporation twenty-five percent (25%) or more of the voting securities of which is owned or controlled, directly or indirectly, by any person or corporation that owns or controls, directly or indirectly, twenty-five percent (25%) or more of the voting securities of any public utility or by any person or corporation in any chain of successive ownership of twenty-five percent (25%) of such securities;

(v) Any person who is an officer or director of a public utility or of any corporation in any chain of successive ownership of fifteen percent (15%) or more of voting securities of a public utility; or

(vi) Any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a public utility, or over which a public utility exercises such control, or that is under a common control with a public utility, such control being the possession, directly or indirectly, of the power to direct or cause the discretion of the management and policies of another, whether such power is established through ownership of voting securities or by any other direct or indirect means.

However, the term "affiliated interest" or "affiliate" shall not include a joint agency organized pursuant to Section 77-5-701 et seq. nor a member municipality thereof.

(h) The term "facilities" includes all the plant and equipment of a public utility, used or useful in furnishing public utility service, including all real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished or supplied for, by or in connection with its public utility business.

(i) The term "cost of service" includes operating expenses, taxes, depreciation, net revenue and operating revenue requirement at a claimed rate of return from public utility operations.

(j) The term "lead-lag study" includes an analysis to determine the amount of capital which investors in a public utility, the rates of which are subject to regulation under the provisions of this chapter, must provide to meet the day-to-day operating costs of the public utility prior to the time such costs are recovered from customers, and the measurement of (i) the lag in collecting from the customer the cost of providing service, and (ii) the lag in paying the cost of providing service by the public utility.

(k) The term "broadband services" means any service that consists of or includes a high-speed access capability to transmit at a rate that is not less than two hundred (200) kilobits per second either in the upstream or downstream direction and either:

(i) Is used to provide access to the Internet, or

(ii) Provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service.

(*l*) The term "video services" means video programming services without regard to delivery technology, including Internet protocol technology ("Internet Protocol television or IPTV") and video programming provided as a part of a service that enables users to access content, information, email or other services offered over the public Internet. The term "video programming" means any programming as defined in 47 USCS Section 522(20).

(m) The term "Voice over Internet Protocol services" or "VoIP services" means any service that: (i) enables real-time, two-way voice communications that originate from or terminate to the user's location in Internet protocol or any successor protocol; (ii) uses a broadband connection from the user's location; and (iii) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(n) The term "commercial mobile services" means any services as defined in 47 USCS Section 332(d).

(o) The term "Internet protocol-enabled services" or "IP-enabled services" means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communications is voice, data or video.

Nothing contained in this paragraph shall apply to retail services that are tariffed by the commission.

HISTORY:

Codes, 1942, § 7716-01; Laws, 1956, ch. 372, § 1; Laws, 1968, ch. 502, § 1; Laws, 1983, ch. 467, § 4; Laws, 1988, ch. 310, § 1; Laws, 1990, ch. 530, § 41; Laws, 1993, ch. 304, § 1; Laws, 2002, ch. 513, § 2; Laws, 2005, ch. 305, § 1; Laws, 2012, ch. 447, § 1, eff from and after July 1, 2012; Laws, 2018, ch. 368, § 1, eff from and after passage (approved March 16, 2018).

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Amendment Notes —

The 2018 amendment, effective March 16, 2018, inserted "customer deposit" near the beginning of (e).

Cross References —

Tax levied under City Utility Tax Law on telephone or communication utilities as defined in subparagraph (3) of paragraph (d) of this section, see § 21-33-203.

Exemption of nuclear fuel and its byproducts from ad valorem taxes, see § 27-31-1.

Application of article to municipal public utilities, see § 77-3-1.

Requirement of certificate of public convenience and necessity for operation of public utility, see § 77-3-11.

Certificate of public convenience and necessity, as related to regulated utilities, see § 77-3-13.

Authority of the commission to determine that the rates and charges for telecommunication services as defined in this section shall not be subject to regulation, see § 77-3-35.

Authority of commission to adopt alternative methods of rate regulation proposed by utilities of the type defined in this section, see § 77-3-35.

Direct appeals to supreme court from decisions of public service commission involving filings for rate changes by certain public utilities, see § 77-3-72.

Tax on gross revenues of public utilities to defray personnel and other expenses of public service commission, see § 77-3-87.

Applicability of the definitions provided in this section to generation and transmission cooperatives, see § 77-5-256.

Sale by the Municipal Gas Authority of Mississippi to a customer of a public utility, see § 77-6-65.

Civil penalties upon person operating public utility as defined in subparagraph (2) of paragraph (d) of this section in violation of any Natural Gas Pipeline Safety Standard, see § 77-11-3.

Junk dealers being required to keep records of certain purchases, see § 97-17-71.

Applicability of provision prohibiting transportation of certain materials out of the state under certain circumstances, see § 97-17-71.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Rate-making, generally.

1. In general.

Publisher was unable to obtain the amount that a utility charged a third party because the information was exempt from disclosure as confidential under Miss. Code Ann. § 79-23-1; the utility had followed the procedures to protect the document under Miss. Code Ann. § 25-61-9(1) and Miss. Pub. Serv. Comm'n R. Prac. & P. 4D, 4I; moreover, the amount charged did not meet the definition of rate under Miss. Code Ann. § 77-3-3(e) because it was a privately negotiated agreement. Gannett River States Publ. Co. v. Entergy Miss., Inc., 940 So. 2d 221, 2006 Miss. LEXIS 447 (Miss. 2006).

Privately owned single customer natural gas pipeline companies, which did not sell to the public, did not hold certificates of public convenience and necessity from the Public Service Commission, and were not required to obtain any other franchise, license or certificate from the State of Mississippi in order to construct or operate their pipelines, were not "public service corporations" within the meaning of Mississippi Constitution Article 4, § 112 and §§ 27-35-301 et seq. Mississippi State Tax Com. v. Moselle Fuel Co., 568 So. 2d 720, 1990 Miss. LEXIS 579 (Miss. 1990).

A company which leases a community repeater to users licensed by the FCC under its Part 91 private Business Radio Service is not making an offering to the public for hire and therefore is not a public utility within meaning of § Motorola Communications & Electronics, Inc. v. Mississippi Public Service Com., 515 F. Supp. 793, 1979 U.S. Dist. LEXIS 8051 (S.D. Miss. 1979), aff'd, 648 F.2d 1350, 1981 U.S. App. LEXIS 12720 (5th Cir. Miss. 1981).

The Mississippi Public Service Commission's application of § 77-3-3 to a company operating a community repeater constitutes an illegal attempt to usurp jurisdiction to regulate communication activity that is pre-empted by the Motorola Communications & Electronics, Inc. v. Mississippi Public Service Com., 515 F. Supp. 793, 1979 U.S. Dist. LEXIS 8051 (S.D. Miss. 1979), aff'd, 648 F.2d 1350, 1981 U.S. App. LEXIS 12720 (5th Cir. Miss. 1981).

2. Rate-making, generally.

Mississippi Public Service Commission (MPSC) lacks statutory authority to adopt any rule regulating the rates of nonprofit water utility associations and corporations. Accordingly, MPSC lacked authority to adopt a rule requiring utilities to waive utility deposits for certified domestic violence victims for a period of 60 days. Miss. Rural Water Ass'n v. Miss. PSC, 222 So. 3d 288, 2017 Miss. LEXIS 234 (Miss. 2017).

Definition of "rate" encompasses the typical usage of the term "rate," the unit cost of a service supplied to the public by a utility, and the "formula or method" by which the compensation is determined; when read in conjunction with this definition, Miss. Code Ann. § 77-3-5 prohibits the Mississippi Public Service Commission from regulating the amounts charged by nonprofit public utilities and the formula used to calculate that amount and any rules or regulations related to this process. Miss. Rural Water Ass'n v. Miss. PSC, 222 So. 3d 288, 2017 Miss. LEXIS 234 (Miss. 2017).

Mississippi Public Service Commission (MPSC), which adopted a rule requiring utilities to waive utility deposits for certified domestic violence victims, did not have statutory authority to regulate the rates of nonprofit water associations because the Public Utilities Act included customer deposits in the definition of the term "rate," prohibited the MPSC from making rules that regulated the rates of a rural water association's members. Miss. Rural Water Ass'n v. Miss. PSC, 222 So. 3d 288, 2017 Miss. LEXIS 234 (Miss. 2017).

Mississippi Public Service Commission (PSC) properly denied a telecommunications company's requested rate increase for telephone services on the ground that the company failed to provide evidence that the rate increase was just and reasonable pursuant to Miss. Code Ann. § 77-3-33(1) because the PSC's interpretation of Miss. Code Ann. § 77-3-35(4) was consistent with the plain language of the statute, and the PSC retained full regulatory authority over switched access service and single-line flat rate voice communication service; if a "retail rate" was somehow different from a tariff "rate," as the company suggested, it was a distinction without a difference. Miss. Code Ann. § 77-3-3(e) (Rev. 2000) included all forms of rates within its definition. Bellsouth Telcomms. v. Miss. PSC, 18 So. 3d 199, 2009 Miss. LEXIS 378 (Miss. 2009).

RESEARCH REFERENCES

ALR.

State regulation of radio paging services. 44 A.L.R.4th 216.

Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority. 85 A.L.R.4th 894.

§ 77-3-5. Jurisdiction and powers of commission.

Notwithstanding any other provision of law, and subject only to the limitations imposed in this chapter and in accordance with the provisions of this chapter, the Public Service Commission shall have exclusive original jurisdiction over the intrastate business and property of public utilities and, for purposes of clarification of the existing scope of said exclusive original jurisdiction, such exclusive original jurisdiction extends, but is not limited to: the establishment of retail rates; challenges, including customer complaints, to the amount of a retail rate or customer bill or whether such rate is just and reasonable; and challenges to the validity or accuracy of rates charged by a public utility, or to the accuracy or reliability of information submitted to the Public Service Commission by a public utility or other person in support of or in opposition to a proposed or approved rate, regardless of the legal theory upon which any such challenge is made. However, the commission shall not have jurisdiction over the production and gathering of natural gas or the sale of natural gas in or within the vicinity of the field where produced, or over the facilities and equipment utilized in any such operations, including, but not limited to, such facilities as separators, scrubbers and gasoline plants of all types. Further, the commission shall not have jurisdiction over the governance, management or other internal affairs of entities as described by paragraphs (b) and (c) below. Moreover, the commission shall not have jurisdiction to regulate the rates for the sales and/or distribution:

(a) Of gas, water, electricity or sewage disposal services by municipalities to such persons as said municipalities are authorized by law to serve;

(b) Of gas or electricity by cooperative gas or electric power associations to the members thereof as consumers, except as provided by Section 77-3-17, where service is rendered in a municipality;

(c) Of water or sewage disposal service by nonprofit corporations or associations where the governing body of such corporation or association is elected by the consumers thereof or appointed by the county board of supervisors; or

(d) Of water by districts organized under the provisions of Chapter 45, Laws of 1966-1967, Extraordinary Session.

HISTORY:

Codes, 1942, § 7716-04; Laws, 1956, ch. 372, § 4; Laws, 1966, ch. 542, § 1; Laws, 1968, ch. 503, § 1; ch. 502, § 2; Laws, 2013, ch. 321, § 2; Laws, 2013, ch. 526, § 1; Laws, 2015, ch. 310, § 1, eff from and after passage (approved Mar.

13, 2013); Laws, 2018, ch. 402, § 24, eff from and after July 1, 2018.

Joint Legislative Committee Note —
Section 2 of ch. 321, Laws of 2013, effective from and after passage (approved March 7, 2013), amended this section. Section 2 of ch. 526, Laws of 2013, effective from and after July 1, 2013 (approved April 23, 2013), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 526, Laws of 2013, which contains language that specifically provides that it supersedes § 77-3-5 as amended by ch. 321, Laws of 2013.

Amendment Notes —
The 2018 amendment rewrote the first sentence of the introductory paragraph, which read: "Subject to the limitations imposed in this article and in accordance with the provisions hereof, the Public Service Commission shall have exclusive original jurisdiction over the intrastate business and property of public utilities."

Cross References —
Regulatory duties of the Commission with respect to joint water management districts, see § 51-8-31.

Power of the commission to consider and adopt a formula type rate of return evaluation rate, see § 77-3-2.

Regulation of generation and transmission cooperatives, see § 77-5-256.

Regulation of intrastate gas pipelines serving industrial users or public utilities, see §§ 77-11-301 et seq.

Public access to records supplied by public utilities, see § 79-23-1.

JUDICIAL DECISIONS

1. In general.
Mississippi Public Service Commission (MPSC) lacks statutory authority to adopt any rule regulating the rates of nonprofit water utility associations and corporations. Accordingly, MPSC lacked authority to adopt a rule requiring utilities to waive utility deposits for certified domestic violence victims for a period of 60 days. Miss. Rural Water Ass'n v. Miss. PSC, 222 So. 3d 288, 2017 Miss. LEXIS 234 (Miss. 2017).

Definition of "rate" encompasses the typical usage of the term "rate," the unit cost of a service supplied to the public by a utility, and the "formula or method" by which the compensation is determined; when read in conjunction with this definition, Miss. Code Ann. § 77-3-5 prohibits the Mississippi Public Service Commission from regulating the amounts charged by nonprofit public utilities and the formula used to calculate that amount and any rules or regulations related to this process. Miss. Rural Water Ass'n v. Miss. PSC, 222 So. 3d 288, 2017 Miss. LEXIS 234 (Miss. 2017).

Mississippi Public Service Commission (MPSC), which adopted a rule requiring utilities to waive utility deposits for certified domestic violence victims, did not have statutory authority to regulate the rates of nonprofit water associations because the Public Utilities Act included customer deposits in the definition of the term "rate," prohibited the MPSC from making rules that regulated the rates of a rural water association's members. Miss. Rural Water Ass'n v. Miss. PSC, 222 So. 3d 288, 2017 Miss. LEXIS 234 (Miss. 2017).

The public service commission had jurisdiction to settle a dispute regarding whether an agreement between the parties conveyed to the defendant city only that portion of a tract to be utilized as a shopping mall or the right to take the entire tract. Arnold Line Water Ass'n v. Mississippi PSC, 744 So. 2d 246, 1999 Miss. LEXIS 116 (Miss. 1999).

Only the Mississippi Public Service Commission may initially decide a matter relating to the regulation of intrastate public utility activity; thus, a circuit court had no jurisdiction to decide that a shopping mall had improperly acted as a public utility. Singing River Mall Co. v. Mark Fields, Inc., 599 So. 2d 938, 1992 Miss. LEXIS 135 (Miss. 1992).

The Mississippi Public Service Commission has the duty, authority, and therefore jurisdiction, over public utilities who come into the state of Mississippi and attempt to invoke the statutory right of eminent domain. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

A New York corporation which provided long distance telephone service across the country was required to comply with state law and, as a condition precedent to the exercise of the statutory right of eminent domain pursuant to § 77-9-717, to submit to the jurisdiction of the Mississippi Public Service Commission and obtain the following: (1) a determination that the telephone company qualified as an entity to which the legislature had granted the power of eminent domain pursuant to §§ 11-27-1 and 77-9-717; (2) a determination that the telephone company had complied with state law in invoking the statutory power of eminent domain; and (3) a certificate of public convenience and necessity for the particular taking in question. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

The Public Service Commission's (PSC) adoption of a performance evaluation plan for determining a power company's rates through a formula that was subject to quarterly adjustments of costs of utility services based on revenue and expense figures supplied by the utility violated the state's public policy and statutory scheme because the plan was a complete abrogation by the PSC of its statutory responsibilities and a relinquishment of control to the very entity the PSC is charged by law to regulate. State ex rel. Pittman v. Mississippi Public Service Com., 538 So. 2d 367, 1989 Miss. LEXIS 12 (Miss. 1989).

Terms of contract between telephone company and its subscribers are supplied by tariffs which have been duly filed and approved by Mississippi Public Service Commission, and claim alleging wrongful disconnection of telephone services must necessarily involve breach of subscriber's tariff or contract. South Cent. Bell v. Epps, 509 So. 2d 886, 1987 Miss. LEXIS 2594 (Miss. 1987).

The public service commission has general jurisdiction and extensive regulatory powers over public utilities. Capital Electric Power Asso. v. Mississippi Power & Light Co., 216 So. 2d 428, 1968 Miss. LEXIS 1229 (Miss. 1968).

The legislation establishing the public service commission does not empower it to regulate the rates of an interstate pipeline company for direct sales of natural gas for industrial use. Texas Gas Transmission Corp. v. Mississippi Public Service Com., 241 Miss. 826, 133 So. 2d 526, 1961 Miss. LEXIS 407 (Miss. 1961).

OPINIONS OF THE ATTORNEY GENERAL

Since interstate pipeline companies do not come within the jurisdiction or supervision of the Public Service Commission, these companies or their representatives may legally make campaign contributions to Public Service Commissioners or candidates for Public Service Commissioner. See Section 77-1-11. 1995 Miss. Op. Att'y Gen. 768.

Senate Bill 3009, enrolled as Chapter 884, Local and Private Laws of Mississippi, 1988 does not exempt that portion of the City of Pontotoc gas utility system that extends more than one mile from the City of Pontotoc corporate limits from full regulation by the Mississippi Public Service Commission (MPSC), including the regulation of rates by the MPSC. 1999 Miss. Op. Att'y Gen. 437.

RESEARCH REFERENCES

ALR.

Community antenna television systems (CATV) as subject to jurisdiction of state public utility or service commission. 61 A.L.R.3d 1150.

Am. Jur.

64 Am. Jur. 2d, Public Utilities §§ 145, 146, 151.

CJS.

73B C.J.S., Public Utilities §§ 295, 296, 302-304, 305 et seq.

§ 77-3-6. Investigations and arbitration of billing and services between public utilities and customers.

(1) Any dispute between a municipally-owned or operated public utility and a customer of such public utility with regard to billing and/or services in excess of Two Thousand Five Hundred Dollars ($ 2,500.00) shall be subject to investigation, review and arbitration by the commission upon petition filed therefor with the commission by such public utility or customer. However, the commission shall not commence any investigation or proceedings pursuant to such petition if at the time of filing the petition suit has been filed in any court of this state or of the United States with regard to the subject matter of the dispute and in which such public utility and customer are parties. Any such petition shall be immediately dismissed if any such suit is filed after filing of the petition with the commission.

(2) In any arbitration proceedings commenced under the provisions of this section, the commission may, by order entered on its minutes and delivery of a certified copy thereof to the public utility, direct any municipally-owned or operated public utility to provide the commission with copies of all statements, accounts and reports concerning operation of the public utility which the utility is required to provide the governing authorities of the municipality under Section 21-27-17. The commission is further authorized to conduct and shall conduct investigation of and informal hearings in the dispute and may negotiate with the public utility and the customer for the resolution thereof. In every arbitration proceeding under this section the commission shall perform such duties as it deems reasonable and likely to result in settlement of the dispute without commencement of litigation between the public utility and the customer.

(3) Participation in any investigation, proceeding, negotiation, or settlement under the provisions of this section shall be voluntary by the public utility and the customer; however, no suit may be commenced in any court of this state by either the public utility or customer based upon the facts giving rise to the dispute for a period of sixty (60) days after a petition is filed with the commission under this section.

(4) The provisions prescribed herein for the Public Service Commission to investigate, review and arbitrate disputes between a municipally-owned or operated public utility and a customer of such public utility shall not extend to tort actions.

HISTORY:

Laws, 1990, ch. 455, § 1, eff from and after July 1, 1990.

Cross References —

Furnishing copies of quarterly and annual reports to public service commission, see § 21-27-17.

Reports to Public Service Commission by municipal public utility commissions, see § 21-27-17.

Billing and service disputes between municipal-owned utilities subject to review and arbitration by public service commission, see § 21-27-29.

§ 77-3-7. Bonding of commission employees; preference for full-time employees; additional personnel.

(1) The commission may require such bonds to be carried on its employees as the commission may deem necessary, the cost thereof to be paid by the commission. Insofar as possible to do so, personnel of the commission shall be retained on a full-time basis and shall have no other employment of any kind. As to any part-time or specially employed person, the minutes of the commission shall recite the necessity for deviation from full-time employment.

(2) Nothing in this section should be interpreted to prevent the commission from utilizing the services of these additional personnel herein provided in rendering assistance to the commission in its other duties where such assignment does not interfere with duties in administering the provisions of this chapter.

HISTORY:

Codes, 1942, § 7716-02; Laws, 1956, ch. 372, § 2; Laws, 1983, ch. 467, § 5; Laws, 1990, ch. 530, § 34, eff from and after July 1, 1990.

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Appointment by commission of executive secretary, see § 77-1-15.

Employment by commission of rate expert and assistant rate expert, see § 77-1-17.

Employment by commission of personnel to carry out and enforce Motor Carrier Regulatory Law, see §§ 77-1-19, 77-1-21.

Public Utilities Staff, see §§ 77-2-1 et seq.

§ 77-3-8. Public service commission staff; Personnel Board to establish salaries; duties of staff; funding of agency expenses; deposit of monies into State General Fund.

(1) There is established in the commission a Public Service Commission staff, which staff shall be a unit, remain as a unit therein, and be responsive to the commission. The Public Service Commission staff shall consist of a sufficient number of professional, administrative, technical, clerical and other personnel as may be necessary for the staff to perform its duties and responsibilities as hereinafter provided. All such personnel of the Public Service Commission staff shall be recommended by the executive secretary and hired or rejected by the commission. Personnel shall be dismissed only for cause in accordance with the rules and regulations of the State Personnel Board. The personnel of the Public Service Commission staff shall be compensated and reimbursed for their actual and necessary expenses, including food, lodging and travel, by the commission from the Public Service Commission Regulation Fund established by Section 77-1-6, and as authorized by Section 25-3-41. The Public Service Commission staff shall be responsible for gathering and analyzing information relating to all matters within the authority of the commission.

(2) The State Personnel Board shall establish and maintain entry-level salaries sufficiently competitive to attract competent, qualified applicants for the specialized skills and positions required by this section without regard to the salaries paid the commissioners and notwithstanding any other provisions of law to the contrary. The State Personnel Board shall authorize, where necessary, a range of salaries within which salary negotiations may be conducted for those positions for which specific knowledge, skills and abilities are set forth herein.

(3) The Public Service Commission staff shall perform such duties as are assigned to them by the commission.

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(5) From and after July 1, 2016, no state agency shall charge another

state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Laws, 1983, ch. 467, § 6; Laws, 1987, ch. 343, § 5; Laws, 1990, ch. 530, § 35; Laws, 2016, ch. 459, § 53, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Public utilities staff formerly authorized under this section, see § 77-2-1.

Abolition of public utilities staff as formerly created in this section and former employees eligible for re-hire for positions created pursuant to § 77-2-1, see § 77-2-9.

Personnel in addition to public utilities staff provided by this section, see § 77-3-7.

Attorney for public service commission not being or exercising duties of general counsel for public utilities staff, see § 77-3-9.

§ 77-3-9. Attorney for public service commission.

The Public Service Commission shall appoint an attorney who shall assist and advise the commission in all matters affecting its powers and duties and to perform such duties and services in connection with this chapter and the enforcement thereof as the commission may require. Such attorney shall be a member of the Mississippi State Bar, shall have practiced law for a minimum of five (5) years and shall possess considerable knowledge of utility regulation generally and of the case law, statutory law and the common law relating thereto. The attorney for the commission shall, upon request of the commission, aid in any investigation or hearing held under the provisions of this chapter. His salary shall be set by the commission, and his salary and expenses shall be paid in the same manner and from the same funds as the salary and expenses of the commissioners.

HISTORY:

Codes, 1942, § 7716-03; Laws, 1956, ch. 372, § 3; Laws, 1983, ch. 467, § 7; Laws, 1990, ch. 530, § 36, eff from and after July 1, 1990.

Joint Legislative Committee Note —

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence. The word "who" was deleted preceding "shall possess considerable knowledge." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Assistant attorneys general generally, see § 7-5-5.

Duty of attorney general to assist and advise commission generally, see § 7-5-49.

General counsel for public utilities staff, see § 77-3-8.

RESEARCH REFERENCES

Law Reviews.

1982 Mississippi Supreme Court Review: Administrative Law: Intervention by Mississippi's Attorney General on Behalf of the Public. 53 Miss. L. J. 123.

§ 77-3-10. Regulated utilities to file with commission copies of contracts with affiliates; authority of commission to disallow certain payments as operating costs.

(1) All public utilities, the rates of which are subject to regulation under the provisions of this chapter, shall file with the commission copies of contracts, wherein the consideration therefor is One Million Dollars ($1,000,000.00) or more, with any holding, managing, operating, constructing, engineering or purchasing company, which is an affiliate of or a subsidiary of, such public utility, and when requested by the commission, copies of such contracts wherein the consideration therefor is less than One Million Dollars ($1,000,000.00) and copies of contracts with any person selling service of any kind. The commission may, after hearing on reasonable notice, disallow any payment to be capitalized or included as an operating cost of the public utility in the fixing of rates or as an asset in fixing a rate base under any such contract if it is found by the commission to be unjust or unreasonable, or made for the purpose or with the effect of concealing, unreasonably transferring or unreasonably dissipating the earnings of the public utility. Provided, however, that in the case of a public utility with fewer than twenty-five thousand (25,000) customers, this subsection shall apply only to such contracts as the commission shall request such public utility to file.

(2) No public utility as described in subsection (1) of this section shall pay any fees, commission or compensation of any description whatsoever to any affiliated or subsidiary holding, managing, operating, constructing, engineering or purchasing company for services rendered or to be rendered without first filing copies of all agreements and contracts therefor with the commission. The commission may, after hearing on reasonable notice, disallow any such payment to be capitalized or included as an operating cost of the public utility in the fixing of rates or as an asset in fixing a rate base under such agreement or contract if it is found by the commission to be unjust or unreasonable. Provided, however, that this subsection shall not apply to motor carriers of passengers.

(3) The public service commission staff, upon direction of the commission, shall have full power and authority to investigate any such contract, arrangement, purchase or sale, and no payment disallowed by the commission shall be capitalized or included as an operating cost of the public utility in the fixing of rates or as an asset in fixing a rate base. If, in any such investigation, the public utility or affiliate shall unreasonably refuse to comply with any request of the commission for information with respect to relevant accounts and records, whether of such public utility or any affiliate, any portion of which may be applicable to any transaction under investigation, so that such parts thereof as the commission may deem material may be made part of the record,

such refusal shall justify the commission in disapproving the transaction under investigation and disallowing payments in pursuance thereof, to be capitalized or included as an operating cost of the public utility in the fixing of rates or as an asset in fixing a rate base.

HISTORY:

Laws, 1983, ch. 467, § 8; Laws, 1990, ch. 530, § 37, eff from and after July 1, 1990.

§ 77-3-11. Certificate of public convenience and necessity required; exceptions; complaints prompting hearing as to adequacy of service.

(1) No person shall construct, acquire, extend or operate equipment for manufacture, mixing, generating, transmitting or distributing natural or manufactured gas, or mixed gas, or water, for any intrastate sale to or for the public for compensation, or for the operation of a public utility operating a business and equipment or facilities as contemplated by subparagraph (iii) of paragraph (d) of Section 77-3-3, without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require the operation of such equipment or facility.

(2) No person shall construct, acquire, extend or operate equipment for manufacture, generating, transmitting or distributing electricity for any intrastate or interstate sale to or for the public for compensation without first having obtained from the commission a certificate that the present and future public convenience and necessity require or will require the operation of such equipment or facility. Provided, however, nothing herein contained shall be construed to require a joint municipal electric power agency organized in accordance with the provisions of Section 77-5-201 et seq., Mississippi Code of 1972, to obtain any permit, license, certificate or approval from the Mississippi Public Service Commission.

(3) No person shall construct, acquire, extend or operate equipment or facilities for collecting, transmitting, treating or disposing of sewage, or otherwise operating an intrastate sewage disposal service, to or for the public for compensation, without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require the operation of such equipment or facilities.

(4) However, nothing herein shall be construed to require any certificate of convenience and necessity from the commission for the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, the distribution or sale of liquefied petroleum gas, the sale of natural gas to the ultimate consumer for use as a motor vehicle fuel, or for the facilities and equipment utilized in any such operations.

(5) Upon complaints filed by not less than ten percent (10%) of the total subscribers or three thousand five hundred (3,500) subscribers of a public utility, whichever is less, then the commission shall hold a hearing on the adequacy of service as contemplated in Section 77-3-21.

HISTORY:

Codes, 1942, §§ 7716-05, 7716-45; Laws, 1956, ch. 372, § 5; Laws, 1968, ch. 502, § 3; Laws, 1983, ch. 467, § 9; Laws, 1985, ch. 446; Laws, 1990, ch. 530, § 38; Laws, 1993, ch. 304, § 2, eff from and after July 1, 1993.

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Issuance of certificates of public convenience and necessity, see § 77-3-13.

Requirement of certificate of public convenience and necessity for construction of facility for generating and transmitting electricity, see § 77-3-14.

Generation and transmission cooperatives subject only to provisions of §§ 77-3-11, 77-3-13, 77-3-14, 77-3-23, 77-3-25, 77-3-27 and 77-3-45, see § 77-5-256.

Certificate of public convenience and necessity required of common carrier or restricted common carrier by motor vehicle, see § 77-7-41.

JUDICIAL DECISIONS

1. In general.

Mississippi Public Service Commission did not err by failing to institute adequacy of service proceedings against a water, sewer, and fire district because a resident did not allege any inadequacy of service in his complaint to the Commission, and none of the other petitioners actually joined in the resident's complaint to the Commission. Green v. Cleary Water, Sewer & Fire Dist., 17 So. 3d 559, 2009 Miss. LEXIS 430 (Miss. 2009), cert. denied, 559 U.S. 971, 130 S. Ct. 1691, 176 L. Ed. 2d 181, 2010 U.S. LEXIS 2154 (U.S. 2010).

The lack of customer requests for water service from a town did not preclude issuance of a certificate of public convenience and necessity to a water association to provide such service. Town of Enterprise v. Miss. PSC, 782 So. 2d 733, 2001 Miss. LEXIS 86 (Miss. 2001).

A New York corporation which provided long distance telecommunications across the country would be entitled to invoke the power of eminent domain if it proved that it was a telephone company constructing new lines which had taken the necessary corporate steps to invoke the power of eminent domain and had obtained a certificate of public convenience and necessity from the Mississippi Public Service Commission. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

The special court of eminent domain properly dismissed a condemnation petition brought by a New York corporation, which provided long distance telephone service across the country, for failure to first obtain a certificate of public convenience and necessity from the Mississippi Public Service Commission as a condition precedent to the exercise of eminent domain by a public utility. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

A New York corporation which provided long distance telephone service across the country was required to comply with state law and, as a condition precedent to the exercise of the statutory right of eminent domain pursuant to § 77-9-717, to submit to the jurisdiction of the Mississippi Public Service Commission and obtain the following: (1) a determination that the telephone company qualified as an entity to which the legislature had granted the power of eminent domain pursuant to §§ 11-27-1 and 77-9-717; (2) a determination that the telephone company had complied with state law in invoking the statutory power of eminent domain; and (3) a certificate of public convenience and necessity for the particular taking in question. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

Privately owned single customer natural gas pipeline companies, which did not sell to the public, did not hold certificates of public convenience and necessity from the Public Service Commission, and were not required to obtain any other franchise, license or certificate from the State of Mississippi in order to construct or operate their pipelines, were not "public service corporations" within the meaning of Mississippi Constitution Article 4, § 112 and §§ 27-35-301 et seq. Mississippi State Tax Com. v. Moselle Fuel Co., 568 So. 2d 720, 1990 Miss. LEXIS 579 (Miss. 1990).

A certificated land line telephone company is required to obtain an additional certificate of convenience and necessity in order to render mobile dial radio telephone service. Keith v. Bay Springs Tel. Co., 251 Miss. 106, 168 So. 2d 728, 1964 Miss. LEXIS 332 (Miss. 1964).

The manifest policy of this legislation is to prevent duplicating and over-riding facilities and certificates. Capital Electric Power Asso. v. Mississippi Power & Light Co., 240 Miss. 139, 125 So. 2d 739, 1961 Miss. LEXIS 443 (Miss. 1961).

The effect of this section is to make the obtaining of a certificate of public convenience and necessity by a utility a condition of its exercise of the power of eminent domain. Mississippi Power & Light Co. v. Blake, 236 Miss. 207, 109 So. 2d 657, 1959 Miss. LEXIS 310 (Miss. 1959).

It cannot be said peremptorily that it is not necessary to obtain a permit under this section for construction work costing more than $35,000. Mississippi Power & Light Co. v. Coldwater, 234 Miss. 615, 106 So. 2d 375, 112 So. 2d 222, 1959 Miss. LEXIS 574 (Miss. 1959).

OPINIONS OF THE ATTORNEY GENERAL

If municipally owned plant, project or development, route, line or system or extension thereof is contemplated in area which has been certificated to another utility, certificate authorizing same must first be obtained from Mississippi Public Service Commission. 1992 Miss. Op. Att'y Gen. 512.

Since a certificate of public convenience and necessity granted by the Public Service Commission authorizes the intrastate sale of water to the public, the City of Southaven may provide water to a municipal fire station in the Pleasant Hill Water Association certificated area. 1998 Miss. Op. Att'y Gen. 539.

RESEARCH REFERENCES

ALR.

Availability of judicial review under 15 USCS § 717r(b) of order of Federal Energy Regulatory Commission granting certificate of public convenience and necessity subject to condition. 47 A.L.R. Fed. 827.

Am. Jur.

36 Am. Jur. 2d, Franchises from Public Entities §§ 9 et seq.

CJS.

37 C.J.S., Franchises §§ 18-20 et seq.

Law Reviews.

Evidence of Business Factors in Condemnation Proceedings Concerning Certificates of Public Convenience and Necessity. 52 Miss. L. J. 927.

§ 77-3-12. Certificate of public convenience and necessity grants exclusive right to public utility to provide services for which certificate issued; utility systems authorized to extend facilities through certificated area of another utility for purposes other than certificated need.

(1) A certificate of public convenience and necessity issued by the Public Service Commission authorizing public utility services to or for the public for compensation in an area grants an exclusive right to the public utility to provide that service in the certificated area.

(2) Nothing contained in subsection (1) of this section or any other provision of law shall prohibit any utility system from extending its system plant, lines or other facilities in or through the certificated area of another utility for purposes other than providing services to or for the public for compensation in such certificated area similar to those services provided by the certificated utility.

HISTORY:

Laws, 2002, ch. 499, § 27, eff from and after passage (approved Apr. 1, 2002).

JUDICIAL DECISIONS

1. Groundwater withdrawal permits.

Mississippi Department of Environmental Quality Permit Board's decision to grant groundwater withdrawal permits to a county utility authority did not violate a utility company's rights because the permits did not allow the utility authority to sell in the company's certificated area; the utility authority intended to expand its regional water system by building wells on land it owned in the company's certificated area and selling water to customers outside of the company's certificated area. Riverbend Utils., Inc. v. Miss. Envtl. Quality Permit Bd., 130 So. 3d 1096, 2014 Miss. LEXIS 69 (Miss. 2014).

§ 77-3-13. Issuance of certificates; temporary certificates; cancelability review upon change of ownership.

(1) The commission shall issue a certificate of convenience and necessity to any person engaged in the construction or operation of such equipment or facility as is mentioned in subsection (1) of Section 77-3-11 on March 29, 1956, for the construction or operation then being conducted, without requiring proof that public convenience and necessity will be served by such construction or operation, and without further proceedings, if application for such certificate is made to the commission within six (6) months after March 29, 1956. Any utility covered by this chapter which has heretofore been under the jurisdiction of the commission shall, upon application within six (6) months of March 29, 1956, be issued a certificate authorizing it to conduct operations and make extensions within any area covered by its service area map or maps on file with the commission on March 29, 1956.

(2) The commission shall issue a certificate of convenience and necessity to any person engaged in the construction or operation of a sewage disposal service as mentioned in subsection (2) of Section 77-3-11 on August 9, 1968, for the construction or operation then being conducted, without requiring proof that public convenience and necessity will be served by such construction or operation, and without further proceedings, if application for such certificate is made to the commission within six (6) months after August 9, 1968. Pending the filing of such application and the issuance of a certificate, the continuance of such construction or operation shall be lawful.

Except as otherwise specifically provided by subsection (2) of Section 77-3-11 or by this subsection, that portion of the business of a public utility dealing with the operation of a sewage disposal service as provided by subsection (2) of Section 77-3-11 shall be subject to provisions of this chapter, in like manner and with like effect as if such business had been included within the definition of a "public utility" in the original enactment of this chapter.

(3) In all other cases, the commission shall set the matter for hearing, and shall give reasonable notice of the hearing thereon to all interested persons, as in its judgment may be necessary under its rules and regulations, involving the financial ability and good faith of the applicant, the necessity for additional services and such other matters as the commission deems relevant. The commission may issue a certificate of public convenience and necessity, or refuse to issue the same or issue it for the establishment or construction of a

portion only of the contemplated plant, route, line or system, or extension thereof, or for the partial exercise only of such right or privilege, and may attach to the exercise of the rights granted by the certificate such reasonable terms and conditions as to time or otherwise as, in its judgment, the public convenience, necessity and protection may require, and may forfeit such certificate after issuance for noncompliance with its terms, or provide therein for an ipso facto forfeiture of the same for failure to exercise the rights granted within the time fixed by the certificate. However, nothing in this section shall be construed as requiring such certificate for a municipally owned plant, project or development, route, line or system or extension thereof in areas within one (1) mile of the corporate boundaries which are not certificated to another utility, and nothing in this chapter or other provision of law shall be construed as allowing a municipally owned plant, project or development, route, line or system or extension thereof in areas certificated to another utility. No certificate shall be required for extensions or additions within the corporate limits of a municipality being served by the holder of a certificate of convenience and necessity.

(4) The commission shall, prior to issuing a certificate of public convenience and necessity to a public utility for any new construction, extension or addition to its property, ascertain that all labor, materials, property or services to be rendered for any proposed project will be supplied at reasonable prices. The commission shall, after issuance of a certificate for facilities estimated to cost Five Million Dollars ($5,000,000.00) or more or estimated to cost an amount equal to one percent (1%) of the rate base allowed by the commission in the utility's last rate case, whichever is greater, assign the public utilities staff to monitor such projects, to inspect periodically construction in progress, and to report to the commission any variances or deviations as found, if any, and to file progress reports thereon with the commission. Such public utility shall file a similar report with the commission at such times and in such form as the commission shall require, including any substantial changes in plans and specifications, cost allocations, construction schedule and funds available to complete the project.

(5) The commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of Sections 77-3-11 through 77-3-21: (a) temporary acts or operations for which the issuance of a certificate will not be required in the public interest; and (b) extensions or additions of service facilities outside of municipalities under such general rules as will promote the prompt availability of such service to prospective users, and at the same time prevent unnecessary and uneconomic duplication of such facilities as between two (2) or more persons.

(6) Prior to the acquisition pursuant to Section 77-3-17, or other provisions of law, by any public agency, authority, district, state or other agency, institution or political subdivision thereof, of any certificate of public convenience and necessity or portion thereof, service areas or portion thereof, or

operating rights or portion thereof, issued or granted by the commission pursuant to the provisions of this section and/or the facilities or other properties and equipment of the utility providing service therein of any regulated utility, as defined in Section 77-3-3(d)(i), (ii) and (iii), the commission shall first determine if such service area, certificate of public convenience and necessity, or operating right, or portions thereof, should be cancelled as provided in Section 77-3-21.

(7) Before the acquisition pursuant to any negotiated purchase agreement entered into before 1987, by any public agency, authority, district, state or other agency, institution or political subdivision thereof, of any certificate of public convenience and necessity or portion thereof, service areas or portion thereof, or operating rights or portion thereof, issued or granted by the commission pursuant to this section and/or the facilities or other properties and equipment of the utility providing service therein of any regulated utility defined in Section 77-3-3(d)(i), the commission first shall determine that such service area, certificate of public convenience and necessity, or operating right, or portions thereof, shall be cancelled as provided in Section 77-3-21.

(8) Notwithstanding any provision of this section to the contrary, the certificate as applied for may be granted without a hearing in uncontested cases; however, the commission may hear any uncontested case if it determines that the public interest will be served thereby.

HISTORY:

Codes, 1942, §§ 7716-05, 7716-45; Laws, 1956, ch. 372, § 5; Laws, 1968, ch. 502, § 3; Laws, 1983, ch. 467, § 10; Laws, 1987, ch. 353, § 2; Laws, 2002, ch. 303, § 1, eff from and after passage (approved Mar. 4, 2002).

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Laws of 1987, ch. 353, § 1, effective March 17, 1987, provides as follows:

"SECTION 1. It is hereby found and declared that it is in the public interest of and beneficial to this state and its people, and in particular to the consumers and customers of regulated public utilities as defined in Section 77-3-3(d)(i),(ii) and (iii), Mississippi Code of 1972, that such customers and consumers be assured of continued adequacy of utility services.

"It is further found and declared that the Mississippi Public Service Commission is the public agency vested with the authority and jurisdiction over the regulation of public utilities and should exercise such jurisdiction and authority over utility services provided to the inhabitants and consumers of those service areas which have been included in certificates of public convenience and necessity and operating rights granted by said commission by exercising the authority heretofore granted to said commission by this Legislature with regard to the cancellation of such certificates prior to any other entity providing said areas with such utility services."

Cross References —

Requirement of certificate of public convenience and necessity for construction of facility for generating and transmitting electricity, see § 77-3-14.

Cancellation of utility's certificate of public convenience and necessity prior to municipality's exercise of eminent domain, see § 77-3-21.

Generation and transmission cooperatives subject only to provisions of §§ 77-3-11, 77-3-13, 77-3-14, 77-3-23, 77-3-25, 77-3-27 and 77-3-45, see § 77-5-256.

JUDICIAL DECISIONS

ANALYSIS

1. Generally.
2. Issuance of certificate.
3. Rights under "grandfather" clause.
4. "Existing facility" rule.
5. "Existing certificate" rule.
6. Municipal entry into certificated area.
7. Effect of municipal annexation.
8. Encroachment into certificated area.
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1. Generally.

A utility has the express right and duty to provide service within its certificated area, and to allow invasion of a certificated area because of a desire of a customer to be served by another utility would cause wasteful duplication and undermine the purpose of the Public Utility Act. Ford v. State, 218 So. 2d 707, 1969 Miss. LEXIS 1611 (Miss. 1969).

Since the legislature had the right and power to determine the public necessity, it also had the power to delegate that function to the public service commission. Mississippi Power Co. v. East Mississippi Electric Power Asso., 249 Miss. 869, 164 So. 2d 479, 1964 Miss. LEXIS 442 (Miss. 1964).

The manifest policy of this legislation is to prevent duplicating and over-riding facilities and certificates. Capital Electric Power Asso. v. Mississippi Power & Light Co., 240 Miss. 139, 125 So. 2d 739, 1961 Miss. LEXIS 443 (Miss. 1961).

2. Issuance of certificate.

An award of a certificate of public convenience and necessity by the Public Service Commission to an electric utility is an exclusive permit to furnish electricity to the persons using electricity in the area designated and certificated to the utility so long as the utility holding the certificate is capable and willing to provide electric energy to the persons within the area. Capital Electric Power Asso. v. Canton, 274 So. 2d 665, 1973 Miss. LEXIS 1606 (Miss. 1973).

It is unnecessary, as a prerequisite to the grant of a certificate of convenience and necessity to serve an undeveloped area, that there had been requests for service in the area. East Mississippi Electric Power Asso. v. Mississippi Power Co., 254 Miss. 832, 182 So. 2d 925, 1966 Miss. LEXIS 1581 (Miss. 1966).

The commission should issue certificates of convenience and of necessity on an area basis in the usual case. Mississippi Power & Light Co. v. Delta Electric Power Asso., 252 Miss. 832, 174 So. 2d 356, 1965 Miss. LEXIS 1150 (Miss. 1965).

The issuance of a certificate under this section is a valid exercise of the state's police power. Delta Electric Power Asso. v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504, 1963 Miss. LEXIS 537 (Miss.), cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142, 1963 U.S. LEXIS 237 (U.S. 1963).

A certificate of public convenience and necessity issued under this section is a valuable right entitled to protection by the courts. Delta Electric Power Asso. v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504, 1963 Miss. LEXIS 537 (Miss.), cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142, 1963 U.S. LEXIS 237 (U.S. 1963); Capital Electric Power Asso. v. Mississippi Power & Light Co., 218 So. 2d 707, 1968 Miss. LEXIS 1265 (Miss. 1969); Capital Electric Power Asso. v. Mississippi Power & Light Co., 250 Miss. 514, 150 So. 2d 534, 1963 Miss. LEXIS 538 (Miss.), cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142, 1963 U.S. LEXIS 237 (U.S. 1963).

The public service commission was authorized to grant to an electric power association a certificate of public convenience and necessity on an area basis rather than a facility basis, and the exclusiveness of the electric power association's right in the areas for which a certificate has been awarded depends upon whether it renders adequate service. Mississippi Power Co. v. East Mississippi Electric Power Asso., 244 Miss. 40, 140 So. 2d 286, 1962 Miss. LEXIS 421 (Miss. 1962).

The action of the public service commission in granting a certificate of public convenience and necessity cannot be overturned if it is supported by substantial evidence, is not arbitrary or capricious, or beyond its power to make, and does not violate some constitutional right. Mississippi Power & Light Co. v. Blake, 236 Miss. 207, 109 So. 2d 657, 1959 Miss. LEXIS 310 (Miss. 1959); Mississippi Power Co. v. East Mississippi Electric Power Asso., 249 Miss. 869, 164 So. 2d 479, 1964 Miss. LEXIS 442 (Miss. 1964).

3. Rights under "grandfather" clause.

A certificate of public convenience and necessity issued to an electric power association, under the so-called "Grandfather Clause" under this section, gave it the exclusive right to furnish electric energy to patrons within the area designated in the certificate and the electric power association was entitled to an injunction against a municipality enjoining it from invading the certificated area. Capital Electric

Power Asso. v. Canton, 274 So. 2d 665, 1973 Miss. LEXIS 1606 (Miss. 1973).

"Grandfather" certificates awarded under this section are on an area, not a facility basis, and the policy of "territorial integrity" of service areas has clearly been recognized. Ford v. State, 218 So. 2d 707, 1969 Miss. LEXIS 1611 (Miss. 1969).

A grandfather certificate for a wholesale electric transmission line is a privilege, regulated and controlled by the state within due process limitations and may be terminated when the needs of the public demand it. Mississippi Power Co. v. South Mississippi Electric Power Asso., 254 Miss. 754, 183 So. 2d 163, 1966 Miss. LEXIS 1574 (Miss.), cert. denied, 385 U.S. 823, 87 S. Ct. 51, 17 L. Ed. 2d 60, 1966 U.S. LEXIS 655 (U.S. 1966).

Under peculiar and special circumstances the commission may authorize the continuance of operations on a facility basis as they were being served on the effective date of the Act. Mississippi Power & Light Co. v. Delta Electric Power Asso., 252 Miss. 832, 174 So. 2d 356, 1965 Miss. LEXIS 1150 (Miss. 1965).

Awards of "grandfather" certificates under this section are on an area rather than a facility basis. Delta Electric Power Asso. v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504, 1963 Miss. LEXIS 537 (Miss.), cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142, 1963 U.S. LEXIS 237 (U.S. 1963); Capital Electric Power Asso. v. Mississippi Power & Light Co., 250 Miss. 514, 150 So. 2d 534, 1963 Miss. LEXIS 538 (Miss.), cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142, 1963 U.S. LEXIS 237 (U.S. 1963).

The right of existing utilities to a certificate of necessity and convenience under this section is a valuable one, entitled to judicial protection. Capital Electric Power Asso. v. Mississippi Power & Light Co., 240 Miss. 139, 125 So. 2d 739, 1961 Miss. LEXIS 443 (Miss. 1961).

4. "Existing facility" rule.

The public service commission was not required to apply the existing facility rule in a proceeding on an application by a telephone answering service for a certificate of public convenience and necessity to render mobile radio service. Keith v. Palmer, 235 So. 2d 454, 1970 Miss. LEXIS 1449 (Miss. 1970).

In determining whether a certificate of convenience and necessity should be granted, the existing facility rule need not be applied to transmission and reception by means of radio waves. Keith v. Palmer, 235 So. 2d 454, 1970 Miss. LEXIS 1449 (Miss. 1970).

While the existing facility rule is applicable to telephone and other public communication services, it should not be used arbitrarily or inflexibly. Keith v. Bay Springs Tel. Co., 251 Miss. 106, 168 So. 2d 728, 1964 Miss. LEXIS 332 (Miss. 1964).

Where a telephone company proposes, as a part of its general telephone service, to install and operate radio telephone services which are not duplicative of an existing radio telephone service located partly in the same general area, the existing facility rule does not apply. Keith v. Bay Springs Tel. Co., 251 Miss. 106, 168 So. 2d 728, 1964 Miss. LEXIS 332 (Miss. 1964).

5. "Existing certificate" rule.

The "existing certificate" rule is that a certificate should not be granted where there is existing adequate service over the route applied for, and, if inadequate, unless the existing carrier has been given an opportunity to furnish such additional services as may be required, and this rule has been applied to the issuance of certificates to public electric utility companies. Mississippi Power Co. v. South Mississippi Electric Power Asso., 254 Miss. 754, 183 So. 2d 163, 1966 Miss. LEXIS 1574 (Miss.), cert. denied, 385 U.S. 823, 87 S. Ct. 51, 17 L. Ed. 2d 60, 1966 U.S. LEXIS 655 (U.S. 1966).

6. Municipal entry into certificated area.

The invasion of an area certificated to a public utility by another utility, even though the invading utility belongs to a municipality, will subject it to a suit in the courts and to damages growing out of such invasion. Capital Electric Power Asso. v. Canton, 274 So. 2d 665, 1973 Miss. LEXIS 1606 (Miss. 1973).

Although a municipal electric utility is not subject to the regulation of the Public Service Commission, and the Commission has no authority to issue a cease and desist order against the municipality, as it may do against regulated utilities, nevertheless, the right to operate a public electric utility under the authority of a certificate of public convenience and necessity issued by the Public Service Commission is a valuable right which may be protected by the courts. Capital Electric Power Asso. v. Canton, 274 So. 2d 665, 1973 Miss. LEXIS 1606 (Miss. 1973).

The public service commission has no jurisdiction to issue a cease and desist order to prevent a municipality from providing water service within its limits in competition with a private previously certificated water company. City of Jackson v. Creston Hills, Inc., 252 Miss. 564, 172 So. 2d 215, 1965 Miss. LEXIS 1130 (Miss. 1965).

The expansion of a municipality into an area served by a private certificated water company did not give it any rights whatsoever to furnish water to the inhabitants of the certificated area in competition with the private company. City of Jackson v. Creston Hills, Inc., 252 Miss. 564, 172 So. 2d 215, 1965 Miss. LEXIS 1130 (Miss. 1965).

The measure of damages for which a municipality is liable for invading the area served by a certificated private water company and there furnishing water in competition with it is the difference between the fair market value of the business as a going concern and the fair market value of any assets remaining after the business closed and ceased to operate as a consequence of the city's competition, and every element of the plant and system reasonably required for its operation should be taken into consideration, including the value of its certificate of public convenience and necessity. City of Jackson v. Creston Hills, Inc., 252 Miss. 564, 172 So. 2d 215, 1965 Miss. LEXIS 1130 (Miss. 1965).

7. Effect of municipal annexation.

A public utility part of whose certificated area has been annexed to a city may continue to serve the annexed area without obtaining a franchise from the city; but subject to the right of the city to regulate reasonably the manner in which its lines and appliances are constructed and maintained. Delta Electric Power Asso. v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504, 1963 Miss. LEXIS 537 (Miss.), cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142, 1963 U.S. LEXIS 237 (U.S. 1963); Capital Electric Power Asso. v. Mississippi Power & Light Co., 250 Miss. 514, 150 So. 2d 534, 1963 Miss. LEXIS 538 (Miss.), cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142, 1963 U.S. LEXIS 237 (U.S. 1963).

This section does not indicate an intent that a utility, part of whose certificated area has been annexed by a municipality, obtain a municipal franchise before operating therein. Capital Electric Power Asso. v. Mississippi Power & Light Co., 250 Miss. 514, 150 So. 2d 534, 1963 Miss. LEXIS 538 (Miss.), cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142, 1963 U.S. LEXIS 237 (U.S. 1963).

A certificate issued under this section is not superseded, in a certificated area annexed to a city, by a franchise granted by the city to another utility. Delta Electric Power Asso. v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504, 1963 Miss. LEXIS 537 (Miss.), cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142, 1963 U.S. LEXIS 237 (U.S. 1963).

8. Encroachment into certificated area.

The fact that a college had been a customer of one utility company for many years would go only to the question of "grandfather" rights of the company and not to the right of the college to serve itself by transmission of electricity on lines owned by it within the certificated area of another utility after purchase of the electricity from the first company at a point outside the second company's certificated area. Ford v. State, 218 So. 2d 707, 1969 Miss. LEXIS 1611 (Miss. 1969).

A customer does not have a right to choose what utility to purchase service from. Ford v. State, 218 So. 2d 707, 1969 Miss. LEXIS 1611 (Miss. 1969).

The fact that electricity purchased by a college was metered in one utility company's service area, and the fact that it is transmitted across a continuous tract of land uncrossed by any public street or road does not give the college and the utility company the right to encroach upon the exclusive service area of a second utility and thus deprive it of a valuable property right without due process of law. Ford v. State, 218 So. 2d 707, 1969 Miss. LEXIS 1611 (Miss. 1969).

The fact that a college, the consumer of electricity, is not a "public utility" within the meaning of the Public Utility Act does not affect the authority of the commission to issue a cease and desist order against a public utility which is furnishing the energy consumed within the certificated area of a second utility. Ford v. State, 218 So. 2d 707, 1969 Miss. LEXIS 1611 (Miss. 1969).

A college, consumer of electricity, was not denied due process when it was given an opportunity to be heard (which it utilized fully) in a proceeding in which the public service commission issued a cease and desist order against one utility company which was furnishing service to the college within the certificated area of another utility; nor did the issuance of the order impair the contract between the college and the first utility company, for the contract was not paramount to the legislative authority vested in the commission at the time the contract was made. Ford v. State, 218 So. 2d 707, 1969 Miss. LEXIS 1611 (Miss. 1969).

That a utility company held a nonexclusive franchise from a county board of supervisors provided no basis for its contention that it had the right to serve a customer at a location within the certificated area of another utility. Ford v. State, 218 So. 2d 707, 1969 Miss. LEXIS 1611 (Miss. 1969).

The fact that a utility company had a municipal franchise to serve a city did not give it the right to serve subsequently annexed areas which were located in the certificated area of another utility. Ford v. State, 218 So. 2d 707, 1969 Miss. LEXIS 1611 (Miss. 1969).

Where a utility company was forbidden to serve a consumer at a location within the certificated area of another utility directly, to permit it to so serve its customers indirectly would be a violation of the utility act. Ford v. State, 218 So. 2d 707, 1969 Miss. LEXIS 1611 (Miss. 1969).

9. Miscellaneous.

Public Service Commission deprived ratepayers of procedural due process by failing to require notice to the ratepayers; no notice of the original filing was provided to the ratepayers. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

H.B. 997, clarifying Miss. Code Ann. §§ 77-3-13, 77-3-17, and 17-3-21 did not violate the Contracts Clause of the federal and state constitutions because the regulation of the state's public utilities fell within the legislature's authority, and where a city failed to secure Mississippi Public Service Commission approval for an acquisition from a power company, its contractual rights had not vested. City of Starkville v. 4-County Elec. Power Ass'n, 909 So. 2d 1094, 2005 Miss. LEXIS 189 (Miss. 2005).

Amendments to Public Utilities Act of 1956 requiring Public Service Commission (PSC) cancellation of public utility's certificate of public convenience and necessity before municipality could exercise eminent domain power to acquire utility's facilities did not violate state constitutional provision prohibiting abridgment of eminent domain rights, despite contention that, by allowing utility to correct any inadequacies before Commission would cancel certificate, amended Act effectively placed ability to abridge power of eminent domain in hands of private corporations; legislature, which could grant or deny power of eminent domain to municipality, could also establish procedure or method by which power might be void. Cities of Oxford, Carthage, Louisville, Starkville & Tupelo v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59, 1997 Miss. LEXIS 386 (Miss. 1997).

Municipalities lacked due process rights which could be offended by amendments to Public Utilities Act of 1956 requiring Public Service Commission (PSC) cancellation of public utility's certificate of public convenience and necessity before municipal exercise of eminent domain power over utility facilities, despite contention that amended Act, by allowing utility to correct any inadequacies before Commission would cancel certificate, placed option of preventing exercise of municipalities' power of eminent domain in hands of utilities; municipalities had no due process rights against legislature, and municipalities could not invoke due process clause against utilities because they were private entities. Cities of Oxford, Carthage, Louisville, Starkville & Tupelo v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59, 1997 Miss. LEXIS 386 (Miss. 1997).

Certificate of public convenience and necessity issued by Public Service Commission (PSC) to utility grants exclusive right to operate in designated area, so long as utility is capable of providing adequate service to customers in area covered by certificate. Cities of Oxford, Carthage, Louisville, Starkville & Tupelo v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59, 1997 Miss. LEXIS 386 (Miss. 1997).

The adoption of rules providing a procedure not permitted by § 77-3-13(3) for the suspension and voiding of a certificate of convenience and necessity exceeded the authority of the Mississippi Public Service Commission, and the rules were therefore invalid. Mississippi Public Service Com. v. Mississippi Power & Light Co., 593 So. 2d 997, 1991 Miss. LEXIS 993 (Miss. 1991).

The Mississippi Public Service Commission exceeded its authority in adopting a rule requiring a utility to provide written notice to its customers of the utility's filing for any certificate because § 77-3-13(3) provides that the Commission shall give the notice required, and therefore the rule would transfer this duty to the utilities contrary to the provisions of the statute. Mississippi Public Service Com. v. Mississippi Power & Light Co., 593 So. 2d 997, 1991 Miss. LEXIS 993 (Miss. 1991).

In a proceeding on an application by a telephone answering service for a certificate of public convenience and necessity to render mobile radio service, a telephone company had a right to intervene for the purpose of protecting its rights and insuring that such rights were not diminished or affected by the issuance of any new certificate of public convenience and necessity. Keith v. Palmer, 235 So. 2d 454, 1970 Miss. LEXIS 1449 (Miss. 1970).

A proceeding for the determination of which of two utilities had the right to serve a customer in a disputed area is not the proper vehicle to determine a rate issue. Ford v. State, 218 So. 2d 707, 1969 Miss. LEXIS 1611 (Miss. 1969).

Although the public service commission granted certificates of convenience and necessity respectively to two electric utilities to furnish service to oil fields on the basis of a private agreement previously entered into between them, and the orders of the commission referred to the agreement for descriptions and locations of the various oil field requirements, it was the action and decision of the commission as contained in its orders that gave validity to the allocation of service between the utilities, rather than any private contract or agreement of theirs. Southwest Mississippi Electric Power Asso. v. Mississippi Power & Light Co., 199 So. 2d 826, 1967 Miss. LEXIS 1313 (Miss. 1967).

The public service commission could not force the United States government to permit any public utility to serve the area embraced in an air force base. Mississippi Power & Light Co. v. Delta Electric Power Asso., 252 Miss. 832, 174 So. 2d 356, 1965 Miss. LEXIS 1150 (Miss. 1965).

OPINIONS OF THE ATTORNEY GENERAL

If municipally owned plant, project or development, route, line or system or extension thereof is contemplated in area which has been certificated to another utility, certificate authorizing same must first be obtained from Mississippi Public Service Commission. 1992 Miss. Op. Att'y Gen. 512.

RESEARCH REFERENCES

Am. Jur.

36 Am. Jur. 2d, Franchises from Public Entities §§ 9 et seq., 22 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Franchises, Forms 21, 23, 26 (unauthorized competition).

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 52 (order granting certificate of public convenience and necessity).

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 61.1 (petition or application–for writ of review–to reverse order of public utilities commission regarding certificate of public convenience and necessity).

CJS.

37 C.J.S., Franchises §§ 18-20 et seq.

§ 77-3-14. Certificate of public convenience and necessity required for construction of electrical generating and transmitting facilities; commission to maintain analysis of electricity needs in state.

(1) Notwithstanding the provisions of Section 77-3-11, Mississippi Code of 1972, and Section 77-3-13, Mississippi Code of 1972, no public utility or other person shall begin the construction of any facility for the generation and transmission of electricity to be directly or indirectly used for the furnishing of public utility service in this state, even though the facility be for furnishing the service already being rendered, without first obtaining from the commission a certificate that the public convenience and necessity requires, or will require, such construction.

(2) The commission shall develop, publicize and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in Mississippi, including its estimate of the probable future growth of the use of electricity, the probable needed generation reserves, the extent, size, mix and general location of generating plants and arrangements for pooling power to the extent not regulated by the Federal Energy Regulatory Commission and other arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of Mississippi, and shall consider such analysis in acting upon any petition by any utility for construction. Each public utility engaged in the generation, transmission and distribution of electric energy shall, upon request of the commission, submit to the commission its forecasts and plans for the addition of generating capacity planned by the utility for an ensuing five-year period and shall furnish to the commission such documents and proof with respect to the need therefor as the commission may reasonably require. In considering these analyses and forecasts, the commission shall consult with the University Research Center, the

utilities commissions or comparable agencies of neighboring states, the Federal Energy Regulatory Commission and other agencies having relevant information and/or duties and responsibilities in this area, and particularly with the Department of Economic and Community Development with reference to the accomplishment of the Mississippi Energy Plan provided for in Section 57-39-11, Mississippi Code of 1972.

(3) In acting upon any petition for the construction of any facility for the generation of electricity, the commission shall take into account the utility's arrangements with other electric utilities for interchange of power, pooling of plant, purchase of power and other methods for providing reliable, efficient and economical electric service.

(4) As a condition for receiving such certificate, the utility shall file an estimate of construction costs in such detail as the commission may require. The commission shall hold a public hearing on each application, and no certificate shall be granted unless the commission has approved the estimated construction costs.

(5) The commission shall maintain an ongoing review of such construction as it proceeds, and the applicant shall submit at such times as the commission shall require during construction a progress report and any revisions in the cost estimates for the construction.

(6) The certification requirements of this section shall not apply to persons who construct an electric generating facility primarily for that person's own use and not for the primary purpose of producing electricity, heat or steam for sale to or for the public for compensation; and the commission may provide for exemption from certification requirements for cogeneration facilities and small standby facilities; provided, however, that such persons shall, nevertheless, be required to report to the commission the proposed construction of such a facility before beginning construction thereof.

HISTORY:

Laws, 1983, ch. 467, § 11; Laws, 1988, ch. 518, § 90; Laws, 1992, ch. 496, § 54, eff from and after July 1, 1992.

Cross References —

University Research Center, see §§ 37-141-1 et seq.

Generation and transmission cooperatives subject only to provisions of §§ 77-3-11, 77-3-13, 77-3-14, 77-3-23, 77-3-25, 77-3-27 and 77-3-45, see § 77-5-256.

§ 77-3-15. Two or more persons holding certificates for similar operations in same municipality.

Where there shall be two (2) or more persons holding certificates of convenience and necessity for similar operation in the same municipality, such operation may be carried on by such persons within their respective certificated areas and such persons shall be exempt from further application to the commission for extension of or additions to their facilities within their respective certificated areas of said municipality, including any extensions of the corporate limits thereof.

Municipally operated utilities shall not be subject to regulation under this article.

HISTORY:

Codes, 1942, § 7716-05; Laws, 1956, ch. 372, § 5; Laws, 2013, ch. 321, § 1, eff from and after passage (approved Mar. 7, 2013).

JUDICIAL DECISIONS

1. In general.

The Public Service Commission has the authority to issue certificates of public convenience and necessity to operate electric utilities to persons operating such utilities within the area at the effective date of the public service, although such utilities were operating within city limits of a municipality. Capital Electric Power Asso. v. Canton, 274 So. 2d 665, 1973 Miss. LEXIS 1606 (Miss. 1973).

The legislature intended that certificates of public convenience and necessity be issued on an area basis rather than on a facility basis. Capital Electric Power Asso. v. Canton, 274 So. 2d 665, 1973 Miss. LEXIS 1606 (Miss. 1973).

RESEARCH REFERENCES

Am. Jur.

36 Am. Jur. 2d, Franchises from Public Entities §§ 27 et seq.

CJS.

37 C.J.S., Franchises §§ 27-36.

§ 77-3-16. Bids required on certain public utility contracts; exceptions; list of contractors and suppliers.

(1) All contracts for construction, extension and/or repair of facilities in excess of two hundred thousand dollars ($200,000.00) by or on the behalf of any public utility subject to rate regulations by the Mississippi Public Service Commission, shall be governed by this section. The public utility shall maintain a list of contractors and suppliers qualified to perform contracts within the scope of proposed utility projects. The public utility shall, upon written request of any qualified prospective bidder, add his or its name to such list. At least every six (6) months, the public utility shall publish in a newspaper, having general circulation in the area in which the utility operates, a notice requesting names of qualified contractors and suppliers. Upon written request by qualified contractors and suppliers, those names shall be added to such list. The public utility shall give to each contractor or supplier on said list who is qualified with respect to a project under consideration written invitation to bid those projects subject to this section. Contracts subject to this section shall be awarded to the lowest and best bidder. Provided, however, nothing contained herein shall prohibit any public utility from performing services covered by this section with its own regularly employed work force.

(2) The public utility may enter into a master contract with the lowest and best contractor to cover all construction work to be performed in a specified geographic area.

(3) If the chief executive officer of a public utility determines that an emergency exists which affects the public health, safety or welfare, the provisions of this section shall not apply. As used in this section an emergency is any occurrence in which service is interrupted.

(4) The provisions of this section shall not apply to contracts which by

their nature are not adapted to competitive bidding, including but not limited to:

(a) Items which may be acquired from a sole source;

(b) Contracts for professional services;

(c) Equipment and systems which by reason of the training of personnel or of any inventory replacement of parts maintained by the utility, are or should be compatible with existing equipment;

(d) Contracts for interstate or intrastate carriage of persons or property with a common carrier or contract carrier at the rates set forth in the officially approved tariff of that carrier; and

(e) Such contracts as the commission may define by regulation.

(5) The public service commission shall have the authority to monitor all conditions contained in this section.

HISTORY:

Laws, 1983, ch. 467, § 12, eff from and after passage (approved April 6, 1983).

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

§ 77-3-17. Operation of public utility following expiration of municipal franchise; municipal acquisition of utility.

In addition to such other rights as it may have to use the streets, alleys and public places of a municipality, a public utility which holds a certificate of public convenience and necessity granted under the provisions of this article covering the geographical area of such municipality, and which (1) is operating under a municipal franchise on March 29, 1956, or (2) shall have previously operated under such a municipal franchise which has expired within five (5) years prior to said date, or (3) which shall hereafter operate under a municipal franchise hereafter granted, may, after the expiration of any such franchise continue to use the streets, alleys and public places therein situated upon condition that (1) such utility shall pay the said municipality compensation therefor at the rate of two percent (2%) of said utility's gross revenue from sales to residential and commercial customers within said municipality, in case of a utility defined in subparagraphs (i) and (ii) of paragraph (d) of Section 77-3-3 and in the case of a utility defined in subparagraph (iii) of paragraph (d) of said Section the said utility shall pay two percent (2%) of the monthly service charges in said municipality whether said utility has a franchise to operate therein or not, such payments to be made quarterly of each year, and (2) after the expiration of such franchise the municipality, or any customer of such utility in such municipality, upon appropriate petition, shall be entitled to a hearing as to whether or not the certificate of convenience and necessity may then and thereafter be granted on a permanent basis. Any co-operative which shall operate within any area of a municipality shall likewise pay such municipality two percent (2%) of the co-operative's gross revenue from sales to residential and commercial customers within said municipality.

Any municipality shall have the right to acquire by purchase, negotiation or condemnation the facilities of any utility that is now or may hereafter be located within the corporate limits of such municipality; provided, however, prior to any municipality exercising the right of eminent domain as provided herein, the commission shall determine that the certificate of public convenience and necessity granted to the utility pursuant to Section 77-3-13 for the service area wherein such facilities are located, shall be cancelled as provided in Section 77-3-21.

HISTORY:

Codes, 1942, § 7716-05; Laws, 1956, ch. 372, § 5; Laws, 1987, ch. 353, § 3, eff from and after passage (Governor's veto overridden by Legislature on March 17, 1987).

Joint Legislative Committee Note —

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the first paragraph, by substituting "subparagraphs (i) and (ii) of paragraph (d)" for "subparagraphs (1) and (2) of paragraph (d)" and "subparagraph (iii) of paragraph (d)" for "subparagraph (3) of paragraph (d)." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Notes —

Laws of 1987, ch. 353, § 1, effective March 17, 1987, provides as follows:

"SECTION 1. It is hereby found and declared that it is in the public interest of and beneficial to this state and its people, and in particular to the consumers and customers of regulated public utilities as defined in Section 77-3-3(d)(i),(ii) and (iii), Mississippi Code of 1972, that such customers and consumers be assured of continued adequacy of utility services.

"It is further found and declared that the Mississippi Public Service Commission is the public agency vested with the authority and jurisdiction over the regulation of public utilities and should exercise such jurisdiction and authority over utility services provided to the inhabitants and consumers of those service areas which have been included in certificates of public convenience and necessity and operating rights granted by said commission by exercising the authority heretofore granted to said commission by this Legislature with regard to the cancellation of such certificates prior to any other entity providing said areas with such utility services."

Cross References —

Public utility paying compensation under this section being exempted from tax levied under City Utility Tax Law and vice versa, see § 21-33-203.

Requirements and procedures for issuance of certificate of public convenience and necessity, see § 77-3-13.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Existing contracts not invalidated.

1. In general.

In a condemnation proceeding, the trial court erred by failing to strike the testimony of the city's expert because his entire appraisal of the value of the private water utility was based on data from Public Service Commission used to determine rates that did not include the value of property contributed by land developers; "contributed property" must be included in the utility plant value for the purpose of condemnation under Miss. Code Ann. § 77-3-17, even though such items were not included for purposes of rate-regulation under Miss. Code Ann. § 77-3-43(2). Dedeaux Util. Co. v. City of Gulfport, 938 So. 2d 838, 2006 Miss. LEXIS 529 (Miss. 2006).

H.B. 997, clarifying Miss. Code Ann. §§ 77-3-13, 77-3-17, and 17-3-21 did not violate the Contracts Clause of the federal and state constitutions because the regulation of the state's public utilities fell within the legislature's authority, and where a city failed to secure Mississippi Public Service Commission approval for an acquisition from a power company, its contractual rights had not vested. City of Starkville v. 4-County Elec. Power Ass'n, 909 So. 2d 1094, 2005 Miss. LEXIS 189 (Miss. 2005).

Water and sewer utilities are excluded from the eminent domain cancellation requirement. City of Gulfport v. Orange Grove Utils., Inc., 735 So. 2d 1041, 1999 Miss. LEXIS 127 (Miss. 1999).

The plain meaning of this section leaves no doubt that a city has no authority to condemn areas lying outside its corporate limits. City of Gulfport v. Orange Grove Utils., Inc., 735 So. 2d 1041, 1999 Miss. LEXIS 127 (Miss. 1999).

Certificate of public convenience and necessity issued by Public Service Commission (PSC) to utility grants exclusive right to operate in designated area, so long as utility is capable of providing adequate service to customers in area covered by certificate. Cities of Oxford, Carthage, Louisville, Starkville & Tupelo v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59, 1997 Miss. LEXIS 386 (Miss. 1997).

Municipalities lacked due process rights which could be offended by amendments to Public Utilities Act of 1956 requiring Public Service Commission (PSC) cancellation of public utility's certificate of public convenience and necessity before municipal exercise of eminent domain power over utility facilities, despite contention that amended Act, by allowing utility to correct any inadequacies before Commission would cancel certificate, placed option of preventing exercise of municipalities' power of eminent domain in hands of utilities; municipalities had no due process rights against legislature, and municipalities could not invoke due process clause against utilities because they were private entities. Cities of Oxford, Carthage, Louisville, Starkville & Tupelo v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59, 1997 Miss. LEXIS 386 (Miss. 1997).

An amendment to § 77-3-17, providing that prior to a municipality exercising the power of eminent domain against a utility the certificate of public convenience and necessity held by the utility had to be cancelled by the Public Service Commission, applied to an action which was pending on the date the statute was amended. Since the right of eminent domain is a creation of statute, any amendment would be treated as though it had been a part of the original statute. Additionally, where a statute affects only the mode of procedure, and not the substantive rights of parties, it applies to pending actions. City of Clarksdale v. Mississippi Power & Light Co., 556 So. 2d 1056, 1990 Miss. LEXIS 33 (Miss. 1990).

Seven USCS § 1926(b) precludes municipal condemnation of nonprofit rural water association's facilities that are located within municipal limits during term of association's indebtedness to Madison v. Bear Creek Water Asso., 816 F.2d 1057, 1987 U.S. App. LEXIS 6328 (5th Cir. Miss. 1987).

Municipality was not authorized by law to condemn public utility's physical facilities used to serve a manufacturing company and to take the company as the municipality's customer without also condemning the public utility's operating rights. Mississippi Power & Light Co. v. Clarksdale, 288 So. 2d 9, 1973 Miss. LEXIS 1338 (Miss. 1973).

A telephone and telegraph company had acquired vested rights under Chapter 38, Laws of 1886, so that Chapter 372, Laws of 1956, to the extent that it authorizes municipalities to impose charges on such company for the use of highways and streets, is unconstitutional, and remanded to District Court with directions to hold the cause while parties proceed to state tribunal for authoritative declaration of applicable state law. Southern Bell Tel. & Tel. Co. v. Meridian, 154 F. Supp. 736, 1957 U.S. Dist. LEXIS 3163 (D. Miss. 1957), aff'd, 256 F.2d 83, 1958 U.S. App. LEXIS 4302 (5th Cir. Miss. 1958).

2. Existing contracts not invalidated.

Miss. Code Ann. § 77-3-17 (as amended) has not invalidated existing contracts between entities delivering public utilities. City of Starkville v. 4-County Elec. Power Ass'n, 819 So. 2d 1216, 2002 Miss. LEXIS 1 (Miss. 2002).

OPINIONS OF THE ATTORNEY GENERAL

Section 77-3-17 makes it clear that power cooperatives must pay two percent of all residential and commercial gross revenues to the municipality in which they are located. Thus, it makes no difference how many various categories, meter rates or charges the cooperative utilizes in determining what fee must be paid to the municipality. 1996 Miss. Op. Att'y Gen. 557.

An electric power association was to be responsible to a city for 2 percent of its gross revenue from sales to both residential and commercial customers in the part of the city which it served. 2000 Miss. Op. Att'y Gen. 202.

Pursuant to § 77-3-17 power cooperatives must pay a franchise fee of two percent of all residential and commercial gross revenues to the municipality in which they are located; it makes no difference how many categories, meter rates or charges the cooperative utilizes in determining what fee must be paid. 2002 Miss. Op. Att'y Gen. 510.

There is no difference in revenue derived from commercial customers and industrial customers in calculating gross revenues for the purposes of payment of the franchise fee by a power cooperative. 2002 Miss. Op. Att'y Gen. 510.

All electricity sold in a municipality by a power cooperative be included in the calculation of gross revenues. 2002 Miss. Op. Att'y Gen. 510.

If a power cooperative has excluded revenues from sales to industrial customers in calculating the amount of the franchise fee, then it may owe the city the fees from these sales to industrial customers. 2002 Miss. Op. Att'y Gen. 510.

A city is mandated to collect franchise fees from utility companies, telephone companies and rural electric cooperatives pursuant to § 77-3-17 and may enforce payment of franchise fees in a court of competent jurisdiction. 2002 Miss. Op. Att'y Gen. 510.

Payment of franchise fees by public utilities that operate in municipalities is required by § 77-3-17 which does not state that the utilities must have a written franchise agreement with the municipalities as a condition for payment of the fees. 2002 Miss. Op. Att'y Gen. 510.

Under the provisions of § 77-3-1, a public utility owned by the city of Holly Springs that is providing electricity to the town of Ashland is exempt from the requirement in this section that it pay the town two percent of it's gross revenue from sales to residential and commercial customers within the municipality. 2004 Miss. Op. Att'y Gen. 529.

A municipality has the authority to acquire by eminent domain the facilities of any utility within the corporate limits of such municipality, but may not acquire by eminent domain those facilities of a utility located outside the municipal limits. 2005 Miss. Op. Att'y Gen. 518.

A water and/or sewer utility certificated by the Public Service Commission which has not operated under a previously expired franchise granted by a municipality is not subject to the 2% fee imposed by Section 77-3-17 upon the annexation of all or a portion of its certificated area into a municipality's corporate limits. 2006 Miss. Op. Att'y Gen. 526.

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. Pl & Pr Forms (Rev), Franchises, Form 1 (complaint, petition, or declaration by municipality to recover percentage of gross earnings as agreed compensation for exercise of franchise).

§ 77-3-19. Applicant for certificate must obtain a municipal franchise.

Notwithstanding any provision in this article to the contrary, in any case where a utility is located and operates, or proposed to locate and operate in a municipality where streets and other public places are essential to such location and operation, no certificate of convenience and necessity shall be issued thereasto without prior franchise granted by the municipality. Such franchise shall not contain any provision conflicting with or repugnant to the exclusive jurisdiction of the commission to regulate rates and services of the utilities as provided in this article. Applicants for certificates of convenience and necessity shall attach to their applications true and correct copies of franchises issued to them by such municipality as the application may embrace. The commission is authorized so to amend such franchise as to exclude and remove therefrom any provision in conflict with or repugnant to the exclusive jurisdiction of the commission over rates and services and which shall in any way fix or affect rates. Should any municipality arbitrarily refuse to grant a franchise or provide for an election for a franchise as provided by law to a utility now operating within said municipality within ninety (90) days after application for said franchise is made, then the utility may obtain a certificate of convenience and necessity without the necessity of first obtaining a franchise. The commission shall so issue said certificate of convenience and necessity upon proper showing by the utility that said franchise is being arbitrarily withheld.

In the event the commission shall rule that a franchise is being arbitrarily withheld and shall issue a certificate of necessity as hereinabove mentioned, the utility obtaining said certificate of convenience and necessity shall not be required to pay to said municipality the two percent (2%) provided for in Section 77-3-17 until such a franchise has been granted to said utility.

In the case of a public utility as defined in subparagraph (iii) of paragraph (d) of Section 77-3-3 which has heretofore been under the jurisdiction of the commission and has its service area maps on file with the commission on March 29, 1956, under such reasonable rules and regulations as the commission shall prescribe, the commission is authorized to issue to such utility a certificate of convenience and necessity without requiring such utility to first obtain a municipal franchise as herein provided.

HISTORY:

Codes, 1942, § 7716-05; Laws, 1956, ch. 372, § 5.

Joint Legislative Committee Note —

Joint Legislative Committee Note- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last paragraph, by substituting "subparagraph (iii) of paragraph (d)" for "subparagraph (3) of paragraph (d)." The Joint Committee ratified the correction at its July 22, 2010, meeting.

RESEARCH REFERENCES

Am. Jur.

8 Am. Jur. Legal Forms 2d, Franchises from Public Entities §§ 124:23-124:44 (grant and acceptance of franchise).

8B Am. Jur. Legal Forms 2d, Franchises from Public Entities §§ 124:47-124:50 (description and conditions of particular franchises).

8B Am. Jur. Legal Forms 2d, Franchises from Public Entities §§ 124:26-124:80 (optional provisions).

§ 77-3-21. Hearing on adequacy of service afforded by certificate holder.

The commission may, after a hearing had upon due notice, make such findings as may be supported by proof as to whether any utility holding a certificate under the provisions of this article is rendering reasonably adequate service in any area covered by such utility's certificate. In the event the commission finds that such utility is not rendering reasonably adequate service the commission may enter an order specifying in what particulars such utility has failed to render reasonably adequate service and order that such failure be corrected within a reasonable time, such time to be fixed in such order. If the utility so ordered to correct such a failure fails to comply with such order of the commission and the commission finds that cancellation of its certificate would be in the best interest of the consuming public served by the holder of the certificate, its certificate for the area affected may be revoked and cancelled by the commission.

Prior to any municipality exercising the power of eminent domain as provided in Section 77-3-17, the commission shall determine that the certificate of public convenience and necessity granted to the utility pursuant to Section 77-3-13 for the service area wherein such facilities are located, shall be cancelled as provided in this section. Nothing in this paragraph shall be construed to include service for water and sewage.

HISTORY:

Codes, 1942, § 7716-05; Laws, 1956, ch. 372, § 5; Laws, 1987, ch. 353, § 4; Laws, 1992, ch. 417, § 2, eff from and after passage (approved April 29, 1992).

Editor's Notes —

Laws of 1987, ch. 353, § 1, effective March 17, 1987, provides as follows:

"SECTION 1. It is hereby found and declared that it is in the public interest of and beneficial to this state and its people, and in particular to the consumers and customers of regulated public utilities as defined in Section 77-3-3(d)(i),(ii) and (iii), Mississippi Code of 1972, that such customers and consumers be assured of continued adequacy of utility services.

"It is further found and declared that the Mississippi Public Service Commission is the public agency vested with the authority and jurisdiction over the regulation of public utilities and should exercise such jurisdiction and authority over utility services provided to the inhabitants and consumers of those service areas which have been included in certificates of public convenience and necessity and operating rights granted by said commission by exercising the authority heretofore granted to said commission by this Legislature with regard to the cancellation of such certificates prior to any other entity providing said areas with such utility services."

Cross References —

Applicability of this section to proceedings for enforcement of statutes administered by commission or regulations or orders of commission, see § 77-1-53.

Application of this section to hearing to determine whether regulated utility is meeting public convenience and necessity requirements, see § 77-3-11.

Municipality's acquisition by purchase, negotiation or condemnation, facilities of any utility within its corporate limits, see § 77-3-17.

Cancellation of utility's certificate of public convenience and necessity prior to municipality's exercise of eminent domain, see § 77-3-21.

Placement of privately owned water system in receivership, see § 77-3-22.

JUDICIAL DECISIONS

1. In general.

Mississippi Public Service Commission did not err by failing to institute adequacy of service proceedings against a water, sewer, and fire district because a resident did not allege any inadequacy of service in his complaint to the Commission, and none of the other petitioners actually joined in the resident's complaint to the Commission. Green v. Cleary Water, Sewer & Fire Dist., 17 So. 3d 559, 2009 Miss. LEXIS 430 (Miss. 2009), cert. denied, 559 U.S. 971, 130 S. Ct. 1691, 176 L. Ed. 2d 181, 2010 U.S. LEXIS 2154 (U.S. 2010).

H.B. 997, clarifying Miss. Code Ann. §§ 77-3-13, 77-3-17, and 17-3-21 did not violate the Contracts Clause of the federal and state constitutions because the regulation of the state's public utilities fell within the legislature's authority, and where a city failed to secure Mississippi Public Service Commission approval for an acquisition from a power company, its contractual rights had not vested. City of Starkville v. 4-County Elec. Power Ass'n, 909 So. 2d 1094, 2005 Miss. LEXIS 189 (Miss. 2005).

Water and sewer utilities are excluded from the eminent domain cancellation requirement. City of Gulfport v. Orange Grove Utils., Inc., 735 So. 2d 1041, 1999 Miss. LEXIS 127 (Miss. 1999).

Certificate of public convenience and necessity issued by Public Service Commission (PSC) to utility grants exclusive right to operate in designated area, so long as utility is capable of providing adequate service to customers in area covered by certificate. Cities of Oxford, Carthage, Louisville, Starkville & Tupelo v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59, 1997 Miss. LEXIS 386 (Miss. 1997).

Municipalities lacked due process rights which could be offended by amendments to Public Utilities Act of 1956 requiring Public Service Commission (PSC) cancellation of public utility's certificate of public convenience and necessity before municipal exercise of eminent domain power over utility facilities, despite contention that amended Act, by allowing utility to correct any inadequacies before Commission would cancel certificate, placed option of preventing exercise of municipalities' power of eminent domain in hands of utilities; municipalities had no due process rights against legislature, and municipalities could not invoke due process clause against utilities because they were private entities. Cities of Oxford, Carthage, Louisville, Starkville & Tupelo v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59, 1997 Miss. LEXIS 386 (Miss. 1997).

The method for cancellation of a certificate prescribed by this section is exclusive. Delta Electric Power Asso. v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504, 1963 Miss. LEXIS 537 (Miss.), cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142, 1963 U.S. LEXIS 237 (U.S. 1963).

Public service commission was authorized to grant to an electric power association a certificate of public convenience and necessity on an area basis rather than a facility basis, and the exclusiveness of the electric power association's right in the areas for which a certificate has been awarded depends upon whether it renders adequate service. Mississippi Power Co. v. East Mississippi Electric Power Asso., 244 Miss. 40, 140 So. 2d 286, 1962 Miss. LEXIS 421 (Miss. 1962).

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities §§ 176 et seq.

§ 77-3-22. Placement of privately owned water and sewer systems in receivership; conditions.

If the commission determines that any privately owned water and/or sewer system within its jurisdiction is unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its owner, or that its management is grossly inefficient, irresponsible or unresponsive to the needs of its customers, the commission or its designated representative may petition the Chancery Court of the First Judicial District of Hinds County or the chancery court of any county wherein the public utility does business for an order attaching the assets of the privately owned water and/or sewer system and placing such water and/or sewer system under the sole control and responsibility of a receiver. If the court determines that the petition is proper in all respects and finds, after a hearing thereon, the allegations contained in the petition are true, it shall order that the water and/or sewer system be placed in receivership. The court, in its discretion and in consideration of the recommendation of the commission or its designated representative, may appoint a receiver who shall be a responsible individual, partnership, corporation or political subdivision knowledgeable in water or sewer service affairs and who shall maintain control and responsibility for the operation and management of the affairs of such water and/or sewer system. The receiver shall operate the water and/or sewer system so as to preserve the assets of the water and/or sewer system and to serve the best interests of its customers. The receiver shall be compensated from the assets of the water and/or sewer system in an amount to be determined by the court.

Control of and responsibility for the water and/or sewer system shall remain in the receiver until the court determines that it is in the best interests of the customers that the water and/or sewer system be returned to the owner, transferred to another owner or assumed by another water and/or sewer system or public service corporation. If the court, after hearing, determines that control of and responsibility for the affairs of the water and/or sewer system should not be returned to the legal owner thereof, the receiver may proceed to liquidate the assets of such water and/or sewer system in the manner provided by law.

Mississippi laws and Mississippi Rules of Civil Procedure generally applicable to receivership shall govern receiverships created under this section.

This section is in addition to the provisions of Section 77-3-21.

HISTORY:

Laws, 1992, ch. 417, § 10; Laws, 1995, ch. 367, § 1, eff from and after passage (approved March 15, 1995).

Cross References —

Petition for appointment of receiver to operate and manage abandoned or grossly mismanaged sewer systems, see § 49-17-44.1.

JUDICIAL DECISIONS

1. In general.

Public Service Commission (PSC) did not make sufficient findings of fact in its order denying rate increase to water utility; relevant portion of order merely stated that utility was not providing adequate service with money currently available and thus was not entitled to increase, Commission did not set forth persuasive evidence or conclusions drawn from evidence which it used in reaching decision, and Supreme Court on appeal was placed in awkward position of trying to ferret out sufficient evidence from record. White Cypress Lakes Water v. Mississippi PSC, 703 So. 2d 246, 1997 Miss. LEXIS 462 (Miss. 1997).

§ 77-3-22.1. Preferences in transfer of ownership of privately owned water or sewer system in receivership.

In any county having a population of more than thirty-five thousand (35,000) but less than forty thousand (40,000), according to the most recent federal decennial census, any water or sewer system for which a finding is made under Section 49-17-44.1 or Section 77-3-22 by a court of competent jurisdiction that it is appropriate for a receiver to be appointed, the receiver shall give preference to a municipality within the county or to the governing authorities of the county in making any transfer of ownership of the water or sewer system. The term “preference,” as used in this section, means that no sale or transfer of the water or sewer system shall be approved by a court of competent jurisdiction or otherwise until two (2) years after the date of appointment of the receiver have elapsed. This right of preference may be waived by the local governmental entity given the preference under this section.

HISTORY:

Laws, 2003, ch. 307, § 2, eff from and after passage (approved Feb. 27, 2003).

Cross References —

Petition for appointment of receiver to operate and manage abandoned or grossly mismanaged sewer systems, see § 49-17-44.1.

§ 77-3-23. Procedure for sale, assignment, lease or transfer of certificate.

It shall be lawful, under the conditions specified below, for public utilities to sell, assign, lease, transfer or otherwise dispose, including, without limitation, any change in control of (a) certificates of public convenience and necessity issued to them under the provisions of this article, or (b) any substantial part of its property necessary or useful in the performance of its duties to the public, including corporate stock that is not publicly traded.

Whenever a purchase, lease, assignment or transfer is proposed, the utility or utilities or the person seeking authority therefor shall present an application to the commission in such form as may be prescribed by the commission. Thereupon the commission shall notify the applicant or applicants and other parties known to have a substantial interest in the proceedings of the time and place for a public hearing at least twenty (20) days prior thereto, unless the commission shall find that public convenience or necessity requires that such hearings be held at an earlier date. Notice of all such hearings shall be given the persons interested therein by mailing such notice to each public utility which may be affected by any order resulting therefrom and by publication in a newspaper having general circulation in the county or counties wherein the facilities or areas that are the subject of the application are located. If, after such hearing, the commission finds that the transaction proposed is in good faith, that the proposed assignee, lessee, purchaser or transferee, is fit and able properly to perform the public utility services authorized by such certificate and to comply with the lawful rules, regulations and requirements of the commission, and that the transaction is otherwise consistent with the public interest, it may enter an order approving and authorizing such sale, lease, assignment or transfer upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe. Whenever such a transaction involves facilities that are included in the rate base of a public utility, the commission shall include, as a prerequisite to its finding that the transaction is consistent with the public interest, a finding that, upon the consummation of the transaction proposed: (a)(i) the native load customers of the public utility will continue to have a first priority to the use and/or benefit of such facilities, or (ii) any loss of such first priority by native load customers to the use and/or benefit of such facilities is not contrary to the public interest; and (b) any native load customers served by any transmission facilities shall be served on the same basis as before the transaction.

Notwithstanding any provision of this section to the contrary, the application may be granted as applied for without a hearing in uncontested cases; however, the commission may hear any uncontested case if it determines that the public interest will be served thereby.

HISTORY:

Codes, 1942, § 7716-41; Laws, 1966, Ex Sess ch. 46, § 1; Laws, 1992, ch. 417, § 3; Laws, 1994, ch. 351, § 1; Laws, 2003, ch. 385, § 1, eff from and after passage (approved Mar. 14, 2003).

Cross References —

Public water authorities, see §§ 51-41-1 et seq.

Duty of public utilities staff to make recommendations concerning transfers of franchises, mergers, consolidations and combinations of public utilities, see § 77-3-8.

Unlawful sale, lease, assignment or transfer of utility property described in this section, see § 77-3-25.

Generation and transmission cooperatives subject only to provisions of §§ 77-3-11, 77-3-13, 77-3-14, 77-3-23, 77-3-25, 77-3-27 and 77-3-45, see § 77-5-256.

OPINIONS OF THE ATTORNEY GENERAL

There does not appear to be any prohibition of negotiated arrangement made with water system to provide free sewer hookups to all members of water association as of date of transfer. 1993 Miss. Op. Att'y Gen. 663.

RESEARCH REFERENCES

Am. Jur.
36 Am. Jur. 2d, Franchises from Public Entities §§ 57 et seq.

§ 77-3-25. Unlawful sale, lease, assignment or transfer of certificate or certain other utility property.

It shall be unlawful for any person, except as provided in Section 77-3-23 to accomplish or effectuate, or to participate in the accomplishing and effectuating, the sale, lease assignment or transfer of a certificate or other utility property described in Section 77-3-23, however the result is attained.

HISTORY:
Codes, 1942, § 7716-42; Laws, 1966, Ex. Sess. ch. 46, § 2; Laws, 1994, ch. 351, § 2, eff from and after passage (approved March 14, 1994).

Cross References —
Investigation of violations of this section, see § 77-3-27.

Generation and transmission cooperatives subject only to provisions of §§ 77-3-11, 77-3-13, 77-3-14, 77-3-23, 77-3-25, 77-3-27 and 77-3-45, see § 77-5-256.

RESEARCH REFERENCES

Am. Jur.
36 Am. Jur. 2d, Franchises from Public Entitites § 61.

§ 77-3-27. Commission to investigate violations.

The commission is hereby authorized, upon complaint or upon its own initiative, to investigate and determine whether any person is violating the provisions of Section 77-3-25.

HISTORY:
Codes, 1942, § 7716-43; Laws, 1966, Ex. Sess. ch. 46, § 3, eff from and after passage (approved December 28, 1966).

Cross References —
Generation and transmission cooperatives subject only to provisions of §§ 77-3-11, 77-3-13, 77-3-14, 77-3-23, 77-3-25, 77-3-27 and 77-3-45, see § 77-5-256.

§ 77-3-29. Extension of service.

The commission may, after hearing, upon notice, by order in writing, require every public utility to establish, construct, maintain and operate any reasonable extension of its existing facilities within the certificated area upon findings and order that such extension is reasonable and practicable, and provided further, that in the case of gas and water a sufficient supply is available and obtainable therefor.

HISTORY:
Codes, 1942, § 7716-06; Laws, 1956, ch. 372, § 6.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities § 156.

§ 77-3-31. Accounts and depreciation reports of utilities.

The commission, by rules and regulations, after notice and hearing shall establish a system of accounts to be kept by the public utilities, the rates of which are subject to regulation by the provisions of this chapter, or the commission may classify said public utilities and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept. Every such public utility shall keep and render to the commission in the manner and form prescribed by the commission uniform accounts of all its public utility operations. In the case of any public utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such federal regulatory agency may be deemed sufficient compliance with the system prescribed by the commission; provided, however, that the commission may prescribe forms of books, accounts, records and memoranda covering information in addition to that required by such federal regulatory agency, where such do not conflict with those prescribed by such federal regulatory agency.

The commission shall, after hearing held upon reasonable notice, from time to time ascertain, determine and by order fix the proper and adequate rates and methods of depreciation, amortization or depletion of the several classes of property of each such public utility or class of public utilities which is subject to regulation by the provisions of this chapter. The commission shall, after hearing had upon reasonable notice, by order in writing require every such public utility or class of public utilities, the rates of which are subject to regulation by the provisions of this chapter, to carry a reasonable and adequate depreciation account in accordance with such rates and methods and with such rules, regulations, orders and forms of accounts as the commission shall prescribe to the extent allowed by the Internal Revenue Code and the rules and regulations promulgated thereunder. Such public utility shall conform its depreciation accounts to the rates and methods so ascertained, determined and fixed. Such rates, methods and accounts shall be utilized uniformly and consistently throughout the rate setting and appeal proceedings.

In determining the allocation of tax savings derived from application of such methods as liberalized depreciation and amortization and the investment tax credit, the commission shall equitably balance the interests of present and future customers and shall apportion such benefits between consumers and the public utilities accordingly, to the extent allowed by the Internal Revenue Code and the rules and regulations promulgated thereunder. Where any portion of the investment tax credit has been retained by a public utility, that same amount shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied, to the extent allowed by the Internal Revenue Code and the rules and regulations promulgated thereunder.

If the public utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the public utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the commission that it was reasonable to choose not to consolidate returns. The amount of income taxes saved by a consolidated group of which a public utility is a member by reason of the elimination in the consolidated return of the intercompany profit on purchases by the public utility from an affiliate shall be applied to reduce the cost of the property or services so purchased.

The commission shall require such public utilities to maintain a reasonably close relationship between their reserve for depreciation and the actual accumulated depreciation, and if such reasonably close relationship is not present, the commission may and should review and make appropriate changes in the annual charge to operating expenses on account of depreciation.

The commission, in determining the allowance for materials, equipment or services to be included in costs of operations for rate-making purposes, shall disallow any unreasonable profit made in the sale of materials, equipment or services supplied for any such public utility by any firm or corporation owned or controlled directly or indirectly by such utility or any affiliate, subsidiary, parent or holding company, associate or any corporation whose controlling stockholders are also controlling stockholders of such utility. The burden of proof shall be on the public utility to prove that no unreasonable profit is involved.

HISTORY:

Codes, 1942, § 7716-07; Laws, 1956, ch. 372, § 7; Laws, 1983, ch. 467, § 13, eff from and after passage (approved April 6, 1983).

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

JUDICIAL DECISIONS

1. In general.

This section vests the commission with rather broad powers to establish a system of accounts and accounting for public utilities, and the system of accounting to be established is partly a legislative question. Mississippi Public Service Com. v. Hinds County Water Co., 195 So. 2d 71, 1967 Miss. LEXIS 1428 (Miss. 1967).

This provision gives the state public service commission power under some circumstances to supplement or modify the Federal Commerce Commission's requirements for utilities subject to federal regulation. Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

Public service commission did not err in disallowing a loss, occasioned by the abandonment of a plant when an independent telephone company switched from the switchboard system to a modern dial system, to be amortized as a future operating expense, where there was substantial evidence to support that decision. Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities § 150.

Practice References.
Accounting for Public Utilities (Matthew Bender).

§ 77-3-33. Rates, classifications and service of utilities.

(1) No rate made, deposit or service charge demanded or received by any public utility shall exceed that which is just and reasonable. Such public utility, the rates of which are subject to regulation under the provisions of this article, may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person. Rates prescribed by the commission shall be such as to yield a fair rate of return to the utility furnishing service, upon the reasonable value of the property of the utility used or useful in furnishing service.

(2) Such utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service. The commission may, after hearing upon reasonable notice had, upon its own motion or upon complaint, ascertain and fix just and reasonable standards, regulations and practices of service which are to be furnished, imposed, observed and followed by all public utilities. The commission may require the service, rules and regulations of each public utility to be filed with the commission and subjected to its approval or to such changes therein as the commission reasonably may require. Practices required or sanctioned pursuant to the provisions hereof shall supersede other requirements of law.

(3) Such utility may employ in the conduct of its business suitable and reasonable classifications of its service, patrons, rates, deposits and service charges. The classification may, in any proper case, take into account the nature of the use, the quantity and quality used, the time when used, the purpose for which used, and any other reasonable consideration.

HISTORY:
Codes, 1942, § 7716-08; Laws, 1956, ch. 372, § 8.

Cross References —
Provisions prohibiting the giving of free transportation or telegraph or telephone service to candidates for public office, inter alia, see § 23-15-891.

Employment and duties of rate expert and his assistant, see § 77-1-17.

Direction that, for purposes of retroactive validation and administration of any formula type utility rate, the provisions of this section shall be interpreted to prevail in any conflict with any provisions of such rate, see § 77-3-2.

JUDICIAL DECISIONS

ANALYSIS

1. Rate-making, generally.
2. Fair return.
3. Items considered or excluded in fixing rates.
4. Evidence.
5. Burden of proof.
6. Power of court.

1. Rate-making, generally.

Public Service Commission erred in granting rate increases for a power company because it failed to comply with the Base Load Act and exceeded its authority granted by the Act; by stipulation, the Commission improperly deferred prudency hearings, which were a prerequisite to granting an increase in rates, and in the absence of prudency hearings, a rate could not be arbitrarily declared as fair, just, and reasonable. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

Mississippi Public Service Commission (PSC) properly denied a telecommunications company's requested rate increase for telephone services on the ground that the company failed to provide evidence that the rate increase was just and reasonable pursuant to Miss. Code Ann. § 77-3-33(1) because the PSC's interpretation of Miss. Code Ann. § 77-3-35(4) was consistent with the plain language of the statute, and the PSC retained full regulatory authority over switched access service and single-line flat rate voice communication service; the PSC did not improperly utilize a "rate of return" methodology to determine the company's requested rate increase because it did not base its conclusion upon the lack of a cost of service study but merely listed several types of possible evidence the company could have submitted to support its rate increase request. Bellsouth Telcomms. v. Miss. PSC, 18 So. 3d 199, 2009 Miss. LEXIS 378 (Miss. 2009).

Mississippi Public Service Commission's (Commission) order regarding an increase in rates for water service provided by the company was not supported by substantial evidence and was contrary to the manifest weight of the evidence, Miss. Code Ann. § 77-3-59; in fixing the fate, the Commission did not evidence its expertise by incorporating in its order cogent reasons for its decision based on a finding of facts pertinent to the particular inquiry before it. Total Envtl. Solutions, Inc. v. Miss. PSC, 988 So. 2d 372, 2008 Miss. LEXIS 337 (Miss. 2008).

For utility rate-making purposes, public is entitled to demand that no more be exacted from ratepayers than utility services are worth. White Cypress Lakes Water v. Mississippi PSC, 703 So. 2d 246, 1997 Miss. LEXIS 462 (Miss. 1997).

For utility rate-making purposes, 'fair rate' is one which, under prudent and economical management, is just and reasonable to both the public and utility. White Cypress Lakes Water v. Mississippi PSC, 703 So. 2d 246, 1997 Miss. LEXIS 462 (Miss. 1997).

Public Service Commission's (PSC) denial of any rate increase to water utility was unsupported by substantial evidence and was contrary to manifest weight of the evidence in utility rate case, warranting reversal and remand to Commission for determination of amount of rate increase, despite Commission's finding that utility was not providing adequate service; denial of rate increase was apparently punitive, utility had been receiving the same base monthly rate from customers for five years, experts testified that, despite competent economic management, existing base rate resulted in ongoing losses to utility, even intervenors conceded that utility was entitled to some increase, and services that utility provided were worth more than present base rate. White Cypress Lakes Water v. Mississippi PSC, 703 So. 2d 246, 1997 Miss. LEXIS 462 (Miss. 1997).

For rate-making purposes, water utility had to, at a minimum, receive enough to enable it to render efficient and continuous service. White Cypress Lakes Water v. Mississippi PSC, 703 So. 2d 246, 1997 Miss. LEXIS 462 (Miss. 1997).

The statutory requirement of just and reasonable rates is satisfied when the rates are cost-based. State ex rel. Pittman v. Mississippi Public Service Com., 538 So. 2d 387, 1989 Miss. LEXIS 10 (Miss. 1989).

Public Service Commission's (PSC) adoption of a performance evaluation plan for determining a power company's rates through a formula that was subject to quarterly adjustments of costs of utility services based on revenue and expense figures supplied by the utility violated the state's public policy and statutory scheme because the plan was a complete abrogation by the PSC of its statutory responsibilities and a relinquishment of control to the very entity the PSC is charged by law to regulate. State ex rel. Pittman v. Mississippi Public Service Com., 538 So. 2d 367, 1989 Miss. LEXIS 12 (Miss. 1989).

The reasonableness of rates charged, or to be charged, by a public utility is not determined by definite rules and legal formulae, but is a question of fact requiring the exercise of sound discretion and independent judgment in each case. State ex rel. Pittman v. Mississippi Public Service Com., 538 So. 2d 367, 1989 Miss. LEXIS 12 (Miss. 1989).

Terms of contract between telephone company and its subscribers are supplied by tariffs which have been duly filed and approved by Mississippi Public Service Commission, and claim alleging wrongful disconnection of telephone services must necessarily involve breach of subscriber's tariff or contract. South Cent. Bell v. Epps, 509 So. 2d 886, 1987 Miss. LEXIS 2594 (Miss. 1987).

On appeal by a public telephone company from an order of the Public Service Commission denying its proposed rate increase and allowing only a 10% overall increase, the chancellor properly exercised his discretion in finding, pursuant to § 77-3-67(4), that the denial of the higher increase sought by the telephone company was not supported by substantial evidence and was against the manifest weight of undisputed evidence, where the commission failed to fix a rate base as required by § 77-3-43, failed to fix a rate of return related to a legally formulated rate base as required by §§ 77-3-33(1) and 77-3-39, and arbitrarily fixed a 10% increase in rates when it appeared certain that compliance with that increase would result in a substantial loss; however, the chancellor erred in fixing a rate base and a rate of return, even though he arrived at amounts warranted by the proof, as § 77-3-67(4) provides instead for a remand of the cause to the commission. Mississippi Public Service Com. v. Hughes Tel. Co., 376 So. 2d 1074, 1979 Miss. LEXIS 2512 (Miss. 1979).

Chancery court properly reversed an order of the Public Service Commission denying any rate increases to a utility company but approving use of a new fuel adjustment clause where, inter alia, the schedule of rate increases and the fuel adjustment clause were inseparable parts of a package, where the company's bond interest and preferred dividend coverage had dropped to a critical level, where the company's immediate construction program required substantial amounts of new capital, and where the Commission neither made findings of fact to support its order nor gave reasons for its conclusion. Smith v. State, 336 So. 2d 769, 1976 Miss. LEXIS 1535 (Miss. 1976).

Public service commission is not required by statute to use any particular formula in determining the reasonable value of property of a public utility for rate-making purposes, but the rates prescribed shall be such as to yield a fair rate of return upon the reasonable value of the property used and useful in furnishing service. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

No public utility has a vested right to any particular method of valuation for rate-making purposes. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

Legislature, by enactment of Chapter 372, Laws of 1956, did not intend to impose upon the public service commission a requirement that the so-called "fair value" formula, with its emphasis upon reproduction cost new, be adopted as a measure of value, in determining the reasonable value of the utility's property for rate-making purposes. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

The reasonableness or unreasonableness of public utility rates is not to be determined by any definite formula, and is not measurable with any great degree of exactness, but is a question of fact calling for the exercise of sound discretion, good sense, and a fair, enlightened and independent judgment. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

2. Fair return.

A fair return, to which a public utility is entitled, is one which, under prudent and economical management, is just and reasonable both to the public and to the utility. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

Rates which enable a telephone company to pay the interest on its debt capital and to compensate stockholders on the basis of an earnings-price ratio of 6.30 per cent, and which produce a return of 4.96 to 5.08 per cent on the reasonable value of its property, are reasonable. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

3. Items considered or excluded in fixing rates.

The rate of a regulated public utility is not to be established by an arbitrary percentage of value of property used by such utility in its operation as sole basis for rate; rates should be fixed by taking into consideration value of such property along with such other factors as operating expenses, service on debt, capital costs and capital structure under prudent and economical management; and another fact for determination is whether revenue produced by such rate will enable utility to secure additional funds for expansion of facilities needed to serve its certificated area, and at the same time, enable it to maintain coverage required by law. Mississippi Power Co. v. Mississippi Public Service Com., 291 So. 2d 541, 1974 Miss. LEXIS

1727 (Miss. 1974), limited, 337 So. 2d 936, 1976 Miss. LEXIS 1602 (Miss. 1976).

Diminution of returns on the other enterprises has a bearing upon the reasonableness of rates permitted to a public utility. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

The exclusion of the cost of additions under construction in determining a telephone company's rate base is proper. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

Items of materials and supplies, and of cash requirements, are properly excluded from a utility's rate base where the amount of such items is less than its reserves for taxes. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

Where the low debt ratio of a utility puts an undue burden on rate-payers, the commission may adopt a hypothetical capital structure which will be less burdensome, for use in the determination of earnings requirements. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

In determining the sufficiency of a rate of return, operating expenses, including so much of the salaries of officers as is just and reasonable, must be considered. Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

4. Evidence.

Classification of consumer rates of an electric utility is not discriminatory per se under § 77-3-33, and where the utility presented testimony that totally electric customers usually received a larger quantity, rendering the cost of service to them less expensive, the Mississippi Public Service Commission did not err in finding that the utility's rate classifications of regular residential, electric water heating, and total electric, were neither arbitrary nor capricious. State ex rel. Allain v. Mississippi Public Service Com., 435 So. 2d 608, 1983 Miss. LEXIS 2502 (Miss. 1983).

In considering the various determinants of a rate base, it is within the province of the commission to determine the weight to be given to evidence, the reliability of estimates and opinions, and the credibility of witnesses. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

In determining a fair rate of return upon the reasonable value of property used by or useful to the public utility in furnishing service, the commission may properly consider evidence of reproduction cost, but is not bound to adopt as such value such cost less actual depreciation. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

Public service commission is not compelled to accept the opinion evidence of a public utility's employees as proof of the reasonable value of the utility's property for rate-making purposes, if, in the opinion of the commission, that evidence is conjectural, unrealistic and unreliable. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

5. Burden of proof.

The burden of producing clear and convincing proof is on a utility asserting that existing rates are confiscatory. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

6. Power of court.

Since the function of rate making is purely legislative in character, a court is without power to fix the rates to be charged by public utilities, but may restrain the imposition of confiscatory rates, or, under the Public Utility Act, determine whether rates as fixed are supported by substantial evidence, or within the other statutory restrictions set forth in Code 1942, § Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

RESEARCH REFERENCES

ALR.

Civil Rights: racial or religious discrimination in furnishing of public utilities services or facilities. 53 A.L.R.3d 1027.

Charitable contributions by public utility as part of operating expense. 59 A.L.R.3d 941.

Validity of imposition, by state regulation, of natural gas priorities. 84 A.L.R.3d 541.

Amount paid by public utility to affiliate for goods or services as includible in utility's rate base and operating expenses in rate proceeding. 16 A.L.R.4th 454.

Propriety of considering capital structure of utility's parent company or subsidiary in setting utility's rate of return. 80 A.L.R.4th 280.

Am. Jur.

64 Am. Jur. 2d, Public Utilities §§ 60, 61 et seq., 165, 166.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Forms 129, 133, 135 (complaints, petitions, or declarations in actions involving service of public utilities).

CJS.

73B C.J.S., Public Utilities §§ 14-17 et seq.

Practice References.

Accounting for Public Utilities (Matthew Bender).

§ 77-3-35. Regulation of rates and charges generally; approval of certain contracts of utilities; regulation of provision of telecommunication services; adoption of alternative methods of regulation; Public Service Commission authorized to regulate only rates, terms and conditions of certain switched access services and single-line flat rate voice communication services; incumbent local exchange carrier to provide primary single-line flat rate voice communication service to premises of permanent residence or business within its franchised service territory if cost to requesting party does not exceed certain amount; commission to retain exclusive original jurisdiction over customer complaints for services continuing to be regulated; certain telecommunication utilities required only to file financial or service quality information required to be filed with Federal Communications Commission.

(1) Subject to the provisions of subsections (2) and (4) of this section, under such reasonable rules and regulations as the commission may prescribe, every public utility, as to the rates which are subject to regulation under the provisions of this article, shall file with the commission, within such time and in such form as the commission may designate, schedules showing such rates and charges established by it and collected and enforced, or to be collected or enforced within the jurisdiction of the commission. The utility shall keep copies of such schedules open to public inspection under such reasonable rules and regulations as the commission may prescribe.

No such public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person or corporation for any service rendered or to be rendered by such public utility a greater or less compensation than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this section, and no person or corporation shall receive or accept any service from any such public utility for a compensation greater or less than prescribed in such schedules.

Utilities selling commodities or rendering any service to cooperatives, municipalities or other nonprofit organizations, shall, at the order of the commission, file schedules of such rates and charges for information purposes only.

The commission may provide, by rules and regulations to be adopted by it, the following:

(a) That utilities may contract with a manufacturer that is not a utility for furnishing the services or commodities described in Section 77-3-3(d) (i), (ii) and (iii) for use in manufacturing;

(b) That utilities described in Section 77-3-3(d)(i) also may contract with a customer that has a minimum yearly electric consumption of two thousand five hundred (2,500) megawatt hours per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(i); and

(c) That utilities described in Section 77-3-3(d)(ii) also may contract with a customer that has a minimum yearly consumption of eight million five hundred thousand (8,500,000) cubic feet of gas per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(ii).

These contracts may be entered into without reference to the rates or other conditions which may be established or fixed pursuant to other provisions of this article. Such regulations shall provide that before becoming effective any such contract shall be approved by the commission.

(2)(a) The Legislature recognizes that the maintenance of universal telephone service in Mississippi is a continuing goal of the commission and that the public interest requires that the commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in a changing environment where competition and innovation are becoming more commonplace, giving due regard to the interests of consumers, the public, the providers of telecommunications services and the continued availability of good telecommunications service. The commission is authorized to issue more than one (1) competing certificate of public convenience and necessity to provide local exchange telephone service in the same geographical area; provided, that the issuing of any such additional certificates shall not otherwise affect any certificate of public convenience and necessity heretofore issued to any provider of such services.

The commission shall adopt all rules and regulations necessary for implementing this subsection (2)(a).

The commission may apply standards adopted by the Federal Communications Commission that are generally applicable to companies that are designated and operate as eligible telecommunications carriers, pursuant to 47 USCS Section 214(e). The commission may exercise its authority to ensure that these carriers, including commercial mobile radio service providers that receive federal eligible telecommunications status, comply with those standards, only to the extent permitted by and consistent with applicable federal laws and regulations.

The commission retains the authority to issue orders to implement its rules, regulations and the provisions of this chapter, including the authority to grant and modify, impose conditions upon, or revoke a certificate.

(b) The commission may, on its own motion or at the request of any interested party, enter an order, after notice and opportunity for hearing, determining and directing that, in the provision of a service or facility by a utility of the type defined in Section 77-3-3(d)(iii), competition or other market forces adequately protect the public interest, or that a service or facility offered by the utility is discretionary, and that the public interest requires that the utility's rates and charges for such service or facility shall not thereafter be subject to regulation by the commission.

(c) In making its determination whether the rates and charges for a service or facility shall not be subject to regulation by the commission, the commission may consider individually or collectively:

(i) Whether the exercise of commission jurisdiction produces tangible benefits to the utility's customers that exceed those available by reliance on market forces or other factors;

(ii) Whether technological changes, competitive forces, discretionary nature of the service or facility, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the Mississippi commission unnecessary or wasteful;

(iii) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or equipment;

(iv) Whether the existence of competition tends to prevent abuses, unjust discrimination and extortion in the charges of telecommunications utilities for the service or facility in question;

(v) The availability of the service or facility from other persons and corporations; or

(vi) Any other factors that the commission considers relevant to the public interest.

In making the determination as above set forth, the commission may specify the period of time during which the utility's rates and charges for the service or facility shall not thereafter be subject to regulation. Likewise, after notice and opportunity for hearing, the commission may revoke a determination and direction made under this section, when the commission finds that commission regulation of the utility's rates and charges for the service or facility in question is necessary to protect the public interest.

(3)(a) The commission is authorized to consider and adopt alternative methods of regulation proposed by a utility of the type defined in Section 77-3-3(d)(i), (ii) or (iii) to establish rates for the services furnished by such utility that are fair, just and reasonable to the public and that provide fair, just and reasonable compensation to the utility for such services.

(b) For purposes of this subsection, the phrase "alternative methods of regulation" means the regulation of utility rates and charges by methods other than the rate base or rate of return method of regulation set forth in other provisions of this article.

(4)(a) Notwithstanding any other provisions of this article or any other statute to the contrary, and consistent with the provisions herein, for those public utilities of the type defined in Section 77-3-3(d)(iii) that are subject to the competitive requirements set forth in 47 USCS Section 251 or those public utilities that have waived a suspension granted by the commission of the requirements of 47 USCS Section 251(b) and (c) as authorized by 47 USCS Section 251(f)(2), the Legislature has determined that, in the provision of all services, other than switched access service, competition or other market forces adequately protect the public interest. Therefore, subject to paragraph (d) of this subsection, the commission no longer has jurisdiction over the services, other than the provision of intrastate switched access service, provided by such public utilities.

(b) For those public utilities of the type defined in Section 77-3-3(d)(iii) that have been granted a suspension by the commission of the requirements of 47 USCS Section 251(b) and (c) as authorized by 47 USCS Section 251(f)(2), the commission, at the request of such public utility, shall enter an order, after notice and opportunity for hearing, determining that such public utility's provision of service will be subject to the same level of regulation as provided in paragraph (a) of this subsection, but only after the commission determines that such public utility has satisfied one (1) of the following conditions:

(i) Has executed interconnection agreements which have been approved by the commission to the extent required under law with two (2) or more local exchange carriers unaffiliated with such public utility;

(ii) Offers for resale at wholesale rates, pursuant to 47 USCS Section 251(c)(4)(A) and (B), such public utility's retail telecommunications services provided to subscribers who are not telecommunications carriers;

(iii) At least two (2) competitive telecommunications providers unaffiliated with such requesting public utility are offering service to such public utility's subscribers; or

(iv) Has experienced a material reduction in access lines or minutes of use in two (2) consecutive years.

A waiver of suspension under paragraph (a) of this subsection shall be effective upon written notification to the commission. The initial rate utilized by such public utility shall be the rate for such service in effect at the time of such waiver under this section. The commission, upon request of the public utility, may return such public utility to a form of regulation permitted under this section.

(c) Subject to paragraph (d) of this subsection, a public utility of the type defined in Section 77-3-3(d)(iii) which is regulated under the provisions of paragraph (a) of this subsection shall not be subject to any rule, regulation or order promulgated by the commission with regard to retail services. The provisions of Section 77-3-23 shall not apply to such public utility regulated under the provisions of paragraph (a) of this subsection.

(d) Nothing in this chapter shall be construed to affect the duties of an incumbent local exchange carrier arising under 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections, or the commission's authority to approve, arbitrate and enforce interconnection agreements and to resolve disputes pursuant to 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections or any other applicable federal law or regulation. The commission shall exercise its jurisdiction in its role as a dispute resolution forum to hear complaints between certificated carriers, including complaints to prohibit anti-competitive practices and with respect to enforcement or modification of any wholesale self-effectuating enforcement mechanism plan in place as of July 1, 2011, and to issue orders to resolve such complaints, provided that such actions are consistent with federal telecommunications law. The commission shall interpret and apply federal, not state, substantive law. The commission shall adjudicate and enforce such claims in accordance with state procedural law and rules. No claim shall be brought to the commission as to which the FCC has exclusive jurisdiction. All complaints brought between carriers pursuant to this section shall be resolved by final order of the commission within one hundred eighty (180) days of the filing of the complaint.

(e) The commission shall retain exclusive original jurisdiction over customer complaints for those services that continue to be regulated. For services no longer regulated, the commission shall have exclusive original jurisdiction to interpret and enforce the terms and conditions of customer service agreements for telecommunications services, but it shall not alter, set aside or refuse to enforce the rates, terms and conditions thereof, either directly or indirectly. No other party shall be allowed to participate in any such complaint proceeding, except for the customer, legal counsel or other representative of the customer, or the public utility involved.

(f) A public utility of the type defined in Section 77-3-3(d)(iii) which is regulated under the provisions of paragraph (a) of this subsection shall not be required to file financial, service quality or other information with the commission. The calculation of the public utility regulatory tax established in Section 77-3-87 shall be based upon ninety thousandths of one percent ($^{90}/_{1000}$ of 1%) per year of the gross revenues from the intrastate operations of such public utility which is subject to regulation under the provision of paragraph (a) of this subsection. In addition, such public utility shall only be required to adhere to billing for retail telecommunications services in compliance with the federal truth in billing regulations prescribed by the Federal Communications Commission.

(g)(i) In order to transition to the changes effectuated by paragraph (a) of this subsection, the rates, terms and conditions for products and services no longer subject to regulation by the commission which were in effect with a specific term immediately prior to July 1, 2006, shall remain in effect for the duration of the specific term as to customers who subscribed to such products or services prior to July 1, 2006. If no term applied to such products or services at the time such customer subscribed to such products or services, then the rates, terms and conditions governing such products or services shall remain in effect until a written customer service agreement becomes effective as described in subparagraph (ii) of this paragraph (g).

(ii) Except as provided in subparagraph (i) of this paragraph (g), the service provider shall offer existing and new customers a written customer service agreement, which in the case of new customers shall be delivered no later than thirty (30) days after the initiation of service. The customer service agreement shall include a provision advising the customer that he has thirty (30) days from receipt in which to elect:

1. To terminate service with the service provider by contacting such service provider within the thirty-day time period, in which case the customer shall have the right to pay off the account in the same manner and under the same rates, terms and conditions as set forth in the written customer service agreement provided to the customer, which written customer service agreement shall relate back in its entirety to the date of a new customer's request for service or the date the agreement was sent to an existing customer, as applicable, and shall be in effect until termination through pay off; or

2. To use the services of the service provider or to otherwise continue the account with the service provider after the thirty-day time period has elapsed, either of which shall constitute the customer's assent to all the rates, terms and conditions of the written customer service agreement. The customer service agreement shall be deemed received three (3) business days after deposit in the United States mail, first-class delivery.

(iii) If any service provider desires to modify in any respect any rates, terms or conditions of a customer service agreement, it shall provide at least thirty (30) days' prior written notice of the modification and the proposed effective date to the customer. The customer service agreement shall include a provision advising the customer that he has the option:

1. To terminate service with the service provider by contacting such service provider prior to the effective date, in which case the customer shall have the right to pay off the account in the same manner and under the same rates, terms and conditions as then in effect; or

2. To use the services of the service provider or to otherwise continue the account with the service provider on or after the effective date, either of which shall constitute the customer's assent to the modified written customer service agreement. The customer service agreement shall be deemed received three (3) business days after deposit in the United States mail, first-class delivery.

(h) Nothing herein shall change the obligation of those public utilities described in Section 77-3-3(d)(iii) to obtain a certificate of public convenience and necessity pursuant to this chapter.

HISTORY:

Codes, 1942, § 7716-09; Laws, 1956, ch. 372, § 9; Laws, 1988, ch. 338; Laws, 1994, ch. 315, § 1; Laws, 1995, ch. 348, § 1; Laws, 1996, ch. 304, § 1; Laws, 2006, ch. 313, § 1; Laws, 2012, ch. 447, § 2, eff from and after July 1, 2012.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the last paragraph in (4)(b), by substituting "may return such public utility to a form of regulation permitted under this section" for "may return such public utility to return to a form of regulation permitted under Section 77-3-35." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References —

Employment and duties of rate expert and his assistant, see § 77-1-17.

Direction that, for purposes of retroactive validation and administration of any formula type utility rate, the provisions of this section shall be interpreted to prevail in any conflict with any provisions of such rate, see § 77-3-2.

Interstate gas pipeline law not de-regulating natural gas or electric power public utility, see § 77-11-311.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Rate-making, generally.
3. Regulatory authority.

1. In general.

Power companies are not entitled or authorized to place a power line underground unless the customer agrees to pay for such. However, a power company may violate its standard of care if it fails to place high voltage lines underground at its own expense where it is feasible and practical. Ware v. Entergy Miss., Inc., 887 So. 2d 763, 2003 Miss. LEXIS 876 (Miss. 2003).

A county board of supervisors in contracting with South Central Bell for telephone service for the county courthouse was not required to resort to public bidding where South Central Bell, as a public utility, was subject to state regulation and was only permitted to charge rates that had been fixed and determined according to the tariffs which it had been required to file with the Mississippi Public Service Commission; however, had the board chosen to purchase or lease equipment from an independent, unregulated equipment supplier, the contract would then have been required to be let on competitive bids because the protection afforded to the public by regulation of South Central Bell would then have been absent. Telcom Systems, Inc. v. Lauderdale County Bd. of Supervisors, 405 So. 2d 119, 1981 Miss. LEXIS 2224 (Miss. 1981).

This section does not authorize the issuance of permission to serve a manufacturer within the service area of another electric company because the manufacturer prefers such service. Capital Electric Power Asso. v. Mississippi Power & Light Co., 240 Miss. 139, 125 So. 2d 739, 1961 Miss. LEXIS 443 (Miss. 1961).

2. Rate-making, generally.

Mississippi Public Service Commission (PSC) properly denied a telecommunications company's requested rate increase for telephone services on the ground that the company failed to provide evidence that the rate increase was just and reasonable pursuant to Miss. Code Ann. § 77-3-33(1) because the PSC's interpretation of Miss. Code Ann. § 77-3-35(4) was consistent with the plain language of the statute, and the PSC retained full regulatory authority over switched access service and single-line flat rate voice communication service; the PSC did not improperly utilize a "rate of return" methodology to determine the company's requested rate increase because it did not base its conclusion upon the lack of a cost of service study but merely listed several types of possible evidence the company could have submitted to support its rate increase request. Bellsouth Telcomms. v. Miss. PSC, 18 So. 3d 199, 2009 Miss. LEXIS 378 (Miss. 2009).

3. Regulatory authority.

By the very terms of Miss. Code Ann. § 77-3-35(4), the statute's revocation of regulatory authority does not apply to switched access service and single-line flat rate voice communication service because the statute specifically reserves to the Mississippi Public Service Commission (PSC)regulatory authority over those two types of service; nothing in the statute, either implicitly or explicitly, limits the PSC's regulatory function to mere ministerial approval or disapproval after "doing the math," and the cap on the limit of annual increases reads as exactly that: a cap on the amount retail rates for the two particular services may be increased in a given year. Bellsouth Telcomms. v. Miss. PSC, 18 So. 3d 199, 2009 Miss. LEXIS 378 (Miss. 2009).

OPINIONS OF THE ATTORNEY GENERAL

Requiring "enhancements" to electric service provided by public utilities, such as steel versus wood poles and underground versus above-ground lines, constitutes a form of ratemaking which is regulated by the Mississippi Public Service Commission. Although a municipality may require lines to be located underground or to be constructed with certain materials, same is subject to the rate schedules approved by MPSC. Sorrell, Mar. 9, 2004, A.G. Op. 04-0099 modified. 2004 Miss. Op. Att'y Gen. 446.

RESEARCH REFERENCES

ALR.

Validity and construction of municipal ordinances regulating community antenna television service (CATV). 41 A.L.R.3d 384.

Community antenna television systems (CATV) as subject to jurisdiction of state public utility or service commission. 61 A.L.R.3d 1150.

Am. Jur.

64 Am. Jur. 2d, Public Utilities § 169.

74 Am. Jur. 2d, Telecommunications §§ 11, 12, 19- 25, 28- 30, 32, 157-159, 162-180.

15 Am. Jur. Legal Forms, Public Utilities Forms 215:24 et seq. (electric service rates).

CJS.

73B C.J.S., Public Utilities §§ 44-103, 265, 269-273, 274, 279-284.

Lawyers' Edition.

Governmental regulation of public utility as violating utility's First Amendment right to free speech or press–Supreme Court cases. 89 L. Ed. 2d 930.

Practice References.

Accounting for Public Utilities (Matthew Bender).

§ 77-3-36. Recovery of costs of political advertising from ratepayers prohibited; recovery of costs of promotional or institutional advertising regulated; definitions.

(1) No public utility, the rates of which are subject to regulation by the commission, shall be permitted to recover from its ratepayers any direct or indirect expenditure made by such utility for political advertising as defined herein. For the purposes of this paragraph, "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative or electoral matters, or with respect to any controversial issue of public importance.

(2) Except to the extent authorized by general regulation of the commission, no public utility, the rates of which are subject to regulation by the commission, shall be permitted to recover from its ratepayers any direct or indirect expenditure made by such utility for promotional or institutional advertising as defined herein. For the purposes of this paragraph, "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of any utility or the selection or installation of any appliance or equipment designed to use such utility's service, and "institutional advertising" means any advertising for the purpose of promoting the general image of a public utility in the community.

(3) The commission shall establish by general regulation the types of promotional and institutional advertising which a public utility shall be permitted to recover as cost of service from the ratepayers and the reasonable cost thereof.

HISTORY:

Laws, 1983, ch. 467, § 14, eff from and after passage (approved April 6, 1983).

Cross References —

Direction that, for purposes of retroactive validation and administration of any formula type utility rate, the provisions of this section shall be interpreted to prevail in any conflict with any provisions of such rate, see § 77-3-2.

§ 77-3-37. Changes in rates.

(1) No public utility shall make any change in any rate which has been

duly established under this chapter, except as provided in this chapter. A public utility seeking a change in any rate or rates shall file with the secretary of the commission and the executive director of the public utilities staff a notice of intent to change rates. The commission may promulgate rules and regulations providing for notice to customers of the filing by any public utility for a rate increase. Routine changes in rates and schedules that do not involve any substantial revenue adjustment may go into effect after thirty (30) days' notice to the commission or after such shorter period of notice as the commission, for good cause shown, may allow. In all other cases, the notice of intent shall contain a statement of the changes proposed to be made in the rates then in force, the new level of revenues sought, the reasons for the proposed changes and the date proposed for such changes to become effective, which date shall not be less than thirty (30) days after the date of filing. The proposed changes may be shown by filing new schedules, by plainly indicating the changes upon schedules filed and in force at the time and kept open to public inspection or by such other manner as will clearly indicate the rates to be changed and the rates proposed. All direct testimony, exhibits and other information which any utility will rely upon in support of the proposed changes shall be filed concurrently with the filing of the notice of intent. Such other data or documentation as the commission shall request shall be supplied by such utility.

(2) The commission shall establish by rule and regulation a standard requirement list of documentation to be filed with or to be included in every notice of intent. With respect to any notice of intent involving a major change in rates as defined in subsection (8) of this section, the standard requirement list in each case shall include:

(a) A copy of its charter or articles of incorporation, if not already on file with the commission;

(b) A schedule of the present rates, fares, tolls, charges or rentals in effect, and the changes it is desired to make;

(c) A balance sheet of the utility prepared as of the last day of the latest month in which data shall be readily available;

(d) An actual operating statement setting forth revenue and expenses by account numbers for the twelve (12) months ending as the date of the balance sheet applicable to the utility filing the notice of intent;

(e) A pro forma operating statement in the same form as the actual operating statement showing estimate of revenue and expenses for the twelve-month period beginning with the effective date of the changed rates (i) without giving effect to the changed rates and (ii) giving effect to the changed rates;

(f) A pro forma operating statement in the same form as the actual operating statement for the same period giving effect to the proposed changes in rates and adjusted for known changes in the cost of operations;

(g) A statement showing the number of stations or customers by classes affected by the proposed changes in rates, the actual revenue under the old rates arising from each class and the annual amount of the proposed increase or decrease applicable to each class;

(h) A description of the utility's property, including a statement of the original cost of the property and the cost to the utility;

(i) A statement in full of the reasons why the change in rates is desired so that the commission may clearly see the justification therefor;

(j) The amount and kinds of stock authorized;

(k) The amount and kinds of stock issued and outstanding;

(*l*) The number and amount of bonds authorized and the number and amount issued;

(m) The rate and amount of dividends paid during the five (5) previous fiscal years, and the amount of capital stock on which dividends were paid each year;

(n) An analysis of surplus covering the period from the close of the last calendar year for which an annual report has been filed with the commission to the date of the balance sheet attached to the notice.

(3) The commission may, by rule and regulation, require the utility filing a notice of intent to change rates to supplement the above data with such other information as the commission or the public utilities staff may reasonably request.

(4) Unless the commission, upon application by a utility and for good cause shown, shall enter an order waiving one or more of the following requirements, then whenever a public utility files a notice of intent wherein an increase in the level of annual revenues in the amount of at least Fifteen Million Dollars ($15,000,000.00) is sought, the standard requirement list of documentation shall include:

(a) Guidelines or directives as to the public utility's presentation provided by a controlling affiliate, parent or holding company;

(b) Marginal cost data;

(c) Alternate rate design;

(d) Conservation effectiveness;

(e) A properly prepared, complete, detailed lead-lag study for the test year for the total company, Mississippi retail, other retail jurisdictions and Federal Energy Regulatory Commission wholesale rates in support of the public utility's total working capital requirement contained therein, including all working papers in support thereof;

(f) Direct testimony proposed to be offered at a hearing.

(5) The notice of intent for major changes in rates as defined in subsection (8) of this section shall state the test period adopted by the public utility in support of its proposed rate changes, which may be a twelve-month period beginning with the proposed effective date of the rates proposed in the notice. For the purpose of expediting the regulatory process, all public utilities shall keep the commission advised of their plans or needs for future requests for major rate changes.

(6) Within five (5) days after the notice of intent has been filed, the utility shall serve a copy of the notice of intent without documentation on all parties of record in its last proceeding in which a major change in rates was sought, and shall file a certificate of service with the commission. Thereafter, a copy of

all material filed by the utility shall be furnished by the utility to those persons as may be provided for by the commission's rules and regulations.

(7)(a) When the rates in a notice of intent are suspended by commission order, the commission may issue a scheduling order which establishes deadlines for submitting data requests, responding to data requests, conducting prehearing conferences and hearings and disposing of other matters necessary for the orderly disposition of the case.

(b) The public utilities staff and all intervenors or protestants shall file all direct testimony, exhibits and other information which is to be relied upon regarding the proposed changes within eighty (80) days from the filing of such notice of intent. At the time of filing direct testimony, exhibits and other information, each party filing such documents shall serve copies of the documentation on all other parties of record and shall file a certificate of service with the commission.

(8) The commission, for good cause shown, may, except in the case of major changes, allow changes in rates to take effect at the end of thirty (30) days from the date of the filing and the notice of intent, or on the effective date set out in the notice, without requiring any further proceedings, under such conditions as it may prescribe. All such changes shall be immediately indicated by such public utility upon its schedules. "Major changes" means (a) an increase in rates which would increase the annual revenues of such public utility more than the greater of One Hundred Thousand Dollars ($100,000.00) or two percent (2%), but shall not include changes in rates allowed to go into effect by the commission or made by the public utility pursuant to an order of the commission after hearings held upon notice to the public, or (b) a change in the rate design which has a significant impact on a class or classes of ratepayers.

(9) For all major changes in rates and schedules as defined in subsection (8) of this section, a public utility as defined in Section 77-3-3(d)(iv) shall provide, not later than twenty (20) days after filing the notice of intent to change rates, notice of such proposed change within each affected customer's bill or invoice and in a newspaper having general circulation in the area where service is being provided by the public utility. The notice shall state the date on which the notice of intent was filed with the commission and shall include a financial impact statement showing the average amount of increase to customers by class and usage. The filing public utility shall file a copy of the notice, along with a certificate with the executive secretary of the commission, verifying that notice to each of the utility's affected customers was provided in a timely manner.

HISTORY:

Codes, 1942, § 7716-10; Laws, 1956, ch. 372, § 10; Laws, 1983, ch. 467, § 15; Laws, 1985, ch. 302, § 1; Laws, 1988, ch. 310, § 2; Laws, 1990, ch. 530, § 39; Laws, 1992, ch. 417, § 4; Laws, 1997, ch. 540, § 1, eff from and after July 1, 1997.

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Direction that, for purposes of retroactive validation and administration of any formula type utility rate, the provisions of this section shall be interpreted to prevail in any conflict with any provisions of such rate, see § 77-3-2.

Hearings on proposed rate changes, see § 77-3-39.

Provisions of subsection (7)(b) of this section are not applicable to any proceeding for the change in rates by the commission in connection with a new electric public utility base load generating facility, see § 77-3-105.

True-up report requesting true-up adjustment of rate reduction bond charge under §§ 77-3-111 through 77-3-127 does not constitute change in rates and is not subject to requirements of Section 77-3-37 or 77-3-39, see § 77-3-119.

JUDICIAL DECISIONS

1. In general.

Public Service Commission improperly sealed information to which the public was entitled because it erred in determining that rate-impact information was confidential and concealed from the ratepayers the amount of the projected increases; the Commission's decision to govern in a cloak of secrecy and grant confidentiality to rate-impact information was arbitrary and capricious. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

Public Service Commission deprived ratepayers of procedural due process by failing to require notice to the ratepayers; no notice of the original filing was provided to the ratepayers. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

Utility customers who never sought intervention in a rate increase proceeding never became parties and, therefore, did not have standing to appeal from the final order of the Public Service Commission. North Miss. Util. Co. v. Wentworth, 604 So. 2d 218 (Miss. 1992).

The amendments to § 77-3-37(6) and (8), effective July 1, 1990, were sufficient to remove any objections pertaining to the Mississippi Public Service Commission's authority to issue a rule allowing a deficiency in designation to be noted by the staff or any party within 30 days, and therefore the rule was valid even though it conflicted with both subsections of the statute as they existed prior to Mississippi Public Service Com. v. Mississippi Power & Light Co., 593 So. 2d 997, 1991 Miss. LEXIS 993 (Miss. 1991).

A natural gas utility seeking a rate increase, which included its investment in an out-of-state savings and loan association as part of its capital structure, was not required to include its tax savings, generated by the savings and loan's losses, in calculating its revenue deficiency in that the utility's ratepayers were not sharing in the losses that created tax savings. State ex rel. Pittman v. Mississippi Public Service Com., 538 So. 2d 387, 1989 Miss. LEXIS 10 (Miss. 1989).

Under Mississippi law, a fair rate of return for a public utility is one that, under prudent and economical management, is just and reasonable to both the public and the utility. Mississippi Power & Light Co. v. Mississippi, 487 U.S. 354, 108 S. Ct. 2428, 101 L. Ed. 2d 322, 1988 U.S. LEXIS 2874 (U.S. 1988).

States may not regulate in areas in which the FERC has properly exercised its jurisdiction to determine just and reasonable wholesale rates or to insure that agreements affecting wholesale rates are reasonable, Congress having drawn a bright line between state and federal authority in the setting of wholesale rates and in the regulation of agreements that affect wholesale rates. Mississippi Power & Light Co. v. Mississippi, 487 U.S. 354, 108 S. Ct. 2428, 101 L. Ed. 2d 322, 1988 U.S. LEXIS 2874 (U.S. 1988).

Under the Federal Power Act (16 USCS §§ 791a et seq.) and the United States Constitution's supremacy clause (Art VI, cl 2), where the Federal Energy Regulatory Commission (FERC) has allocated a specified percentage of the capacity costs of a powerplant that serves the needs of a utility holding company's entire system to one of the holding company's operating subsidiaries, the state public utility commission having jurisdiction over the operating subsidiary's retail electric rates must treat the operating subsidiary's FERC-mandated payments for the powerplant's costs as reasonably incurred operating expenses for the purpose of setting the subsidiary's retail rates; accordingly, state commission proceedings-(1) to determine whether some or all of the costs were not prudently incurred, including evaluation of either the holding company's decision to invest in the power plant or the operating subsidiary's decision to be a party to agreements to construct and operate the plant, or (2) to challenge the reasonableness of the FERC's cost allocation-are pre-empted by federal law, since (1) the FERC has exclusive authority to determine the reasonableness of wholesale rates, (2) the

FERC's exclusive jurisdiction applies not only to rates, but also to power allocations that affect wholesale rates, and (3) states may not bar regulated utilities from passing through to retain consumers FERC-mandated wholesale rates. Mississippi Power & Light Co. v. Mississippi, 487 U.S. 354, 108 S. Ct. 2428, 101 L. Ed. 2d 322, 1988 U.S. LEXIS 2874 (U.S. 1988).

Intervention by resident security holders was improper where their interest was adequately represented by utility company which was party to action, security holders interest being preservation of their stock value through award of rate increase, which was co-existent with utility company's desire to enhance its financial position by obtaining rate increase. State ex rel. Pittman v. Mississippi Public Service Com., 506 So. 2d 978, 1987 Miss. LEXIS 2367 (Miss. 1987), rev'd, 487 U.S. 354, 108 S. Ct. 2428, 101 L. Ed. 2d 322, 1988 U.S. LEXIS 2874 (U.S. 1988).

A county board of supervisors in contracting with South Central Bell for telephone service for the county courthouse was not required to resort to public bidding where South Central Bell, as a public utility, was subject to state regulation and was only permitted to charge rates that had been fixed and determined according to the tariffs which it has been required to file with the Mississippi Public Service Commission; however, had the board chosen to purchase or lease equipment from an independent, unregulated equipment supplier, the contract would then have been required to be let on competitive bids because the protection afforded to the public by regulation of South Central Bell would then have been absent. Telcom Systems, Inc. v. Lauderdale County Bd. of Supervisors, 405 So. 2d 119, 1981 Miss. LEXIS 2224 (Miss. 1981).

RESEARCH REFERENCES

ALR.

Propriety of considering capital structure of utility's parent company or subsidiary in setting utility's rate of return. 80 A.L.R.4th 280.

Public utility's right to recover cost of nuclear power plants abandoned before completion. 83 A.L.R.4th 183.

Am. Jur.

20A Am. Jur. Pl & Pr Forms (Rev) Public Utilities, Form 31C (petition or application by water company for approval of rate schedule and for change in rate of computing annual accrual to depreciation reserve).

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 36 (notice from public utility to commission as to proposed rate increase).

CJS.

73B C.J.S., Public Utilities §§ 44-103, 265, 269-273, 274.

Law Reviews.

1989 Mississippi Supreme Court Review: Mississippi Public Service Commission. 59 Miss. L. J. 792.

Practice References.

Accounting for Public Utilities (Matthew Bender).

§ 77-3-39. Hearing on rate change; suspension of proposed rates.

(1) Whenever there is filed with the commission by any public utility any notice of intent to change rates pursuant to the provisions of Section 77-3-37, the commission, if it so orders within thirty (30) days after the date such notice of intent is filed, shall hold a hearing to determine the reasonableness and lawfulness of such rate change. The commission shall hold such hearing in every case in which the change in rates constitutes a major change in rates, as defined in Section 77-3-37(8). An abbreviated proceeding may satisfy this requirement if the commission's order is supported by the data, documentation and exhibits on file in the proceeding.

(2) Pending such hearing and the decision thereon, the commission may, at any time before they become effective, suspend the operation of such rate or rates, but not for a period longer than one hundred twenty (120) days beyond the date of the filing of the notice of intent, except as provided in subsections (15) and (16) of this section.

(3) Prior to the hearing specifically provided for herein, the commission

shall direct all parties of record to appear before a hearing examiner or member of the commission staff designated by it, for a prehearing conference.

(4) Such prehearing conference shall be held at least twenty (20) days before the date such rate case is set for hearing. The commission shall establish a procedure for conducting such prehearing conference, which procedure shall include: (a) setting forth issues upon which no evidence shall be taken, except upon offer of proof; (b) designation of specific issues upon which evidence will be taken; and (c) specific areas of agreement to be placed on the record, together with the original position of the utility, the public utilities staff and the interested parties of record.

(5) At such prehearing conference the commission, or its designee, and the parties shall consider: (a) the simplification of the issues; (b) the necessity or desirability of providing additional information to the commission; (c) the possibility of obtaining admissions or stipulations that will avoid unnecessary proof; and (d) such other matters as may aid in the disposition of the case.

(6) The commission may accept and adopt as its own, the agreements between any or all interested parties of record, or any portion thereof, resulting from the prehearing conference and allow such changes in rates, without requiring any further proceedings, to become effective immediately.

(7) The commission may enter its order reciting the action taken at the prehearing conference, the agreements made by the parties as to any matters considered and the limitation of the issues for hearing to those not disposed of by admissions or stipulations of counsel. If practicable, such order shall specify the facts that appear without substantial controversy, including the extent to which the rate change is not in controversy, and shall also direct such further proceedings in the case as are just.

(8) After the prehearing conference and no later than ten (10) days prior to the date set by the commission for a hearing:

(a) The public utilities staff shall submit to the commission all final exhibits, prepared testimony and evidence, and shall serve copies on all interested parties of record, which documents shall reflect the agreements made at the prehearing conference;

(b) The utility shall provide an exhibit indicating which portion, if any, of the public utilities staff's presentation and that of other parties it is prepared to accept and be free of future litigation, showing thereon the effect of such acceptance on the applicant's request for such changes, and shall serve copies on all parties of record;

(c) Parties other than the public utilities staff and the utility shall submit their amended exhibits, prepared direct testimony and evidence, reflecting the agreements made at the prehearing conference, and shall serve copies on all parties of record.

(9) If, after such hearing or abbreviated proceeding, the commission shall find any such rate or rates to be unjust, unreasonable or unreasonably discriminatory, or in anywise in violation of the law, the same shall be set aside, and the commission shall determine and fix by order such rate or rates as will yield a fair rate of return to the public utility for furnishing service to

the public and shall make and file its conclusions and findings of facts supporting such order. A copy of such order shall be served upon the utility in the manner provided in this chapter, and the rates fixed by the commission shall be the legal rates until changed as prescribed by this chapter.

(10) Notwithstanding anything to the contrary contained in this chapter, the commission shall hold the hearing, render its decision and enter its order not more than one hundred twenty (120) days after the date of the filing of the said notice of intent. If the commission does not make a final determination concerning any schedule of rates within a period of one hundred twenty 120) days after the date of the filing of the notice of intent, and notwithstanding any order of suspension, except as provided in subsections (15) and (16) of this section, the public utility may put such suspended rate or rates into effect as temporary rates by filing with the commission a bond in a reasonable amount approved by the commission, with sureties approved by the commission, conditioned upon the refund, in a manner and to the parties to be prescribed by order of the commission, of the amount of the excess, with lawful interest thereon, if the rate or rates so put into effect are finally determined to be excessive. There may be substituted for such bond other arrangements satisfactory to the commission for the protection of the parties interested. During any such period when suspended rates are in effect under bond or other arrangement the commission may, in its discretion, require that the public utility involved shall keep an accurate account of payments made under the rate or rates which the public utility has put into operation in excess of the rate or rates in effect immediately prior thereto.

(11) In addition to the other remedies provided by law, should there be an appeal of the commission's final order, the commission shall allow the utility to place such portion of the schedule of rates that is approved by the commission in such final order into effect under refunding bond or other arrangements satisfactory to the commission for the protection of parties interested.

(12) Should the final judicial determination of an appeal of a commission's final order rendered pursuant to subsection (9) hereof result in a schedule of rates less than what the commission allowed, the commission shall by order require the refund to customers of any amounts collected by a utility under bond, or other arrangements, during the appellate process which the courts found to be in excess of the amounts that should have been allowed by the commission in its final order. Such refunds shall be made in full, including interest at the lawful rate and shall be made within ninety (90) days after such final judicial determination. In lieu of payment, the utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility.

(13) Any bond, or other arrangements, approved by the commission pursuant to subsection (11) of this section shall be in such amount and with sufficient sureties to insure the prompt payment of any refunds if the rates so put into effect are finally determined by the commission or the courts to be excessive.

(14) For purposes of subsections (9), (11) and (12) of this section, the term "final order" means an order of the commission promulgated pursuant to

subsection (9) of this section or, in the event of a rehearing conducted pursuant to Section 77-3-65, means an order of the commission promulgated subsequent to such rehearing.

(15) No public utility may have more than one (1) major change in rates in effect under refunding bond at the same time. When a case is pending before the commission or before any court which involves a major change in rates which are in effect under refunding bond, and when the commission shall find that the pending case involves an issue or issues necessary to be resolved before the commission can effectively proceed with the hearing, decision or order, the 120-day period provided for in subsections (2) and (10) of this section may be enlarged by the commission, in order to postpone the hearing on the notice of intent, decision or final order in any subsequent rate case filed by the same utility, until a final order has been rendered with respect to the prior pending change in rates.

(16) When a notice of intent to change rates is filed with the commission, said notice shall be assigned a docket number and the commission shall examine the filing to determine if it contains the standard requirement list of documentation set out in Section 77-3-37(2) and (4), if applicable, and in any rules and regulations adopted by the commission under Section 77-3-37(2). Within five (5) days from the date said notice is filed, the commission shall notify the filing utility in writing of its failure to include with its notice any items included in such standard requirement list of documentation. Such notification shall specify the item or items not filed with said notice. The filing utility shall have ten (10) days from the date it receives said notification to file the omitted item or items with the commission. Provided, however, upon request by the filing utility made within said ten-day period, the commission shall grant, by order, such additional time as the filing utility may request, not to exceed thirty (30) additional days, within which to file the omitted item or items. If the filing utility fails to file the omitted item or items within said ten (10) days or within such extended period of time as the commission by order shall allow, the commission may refuse to consider any evidence in support of said item or items in making the commission's final determination concerning the schedule of rates filed with the notice. Notwithstanding the 120-day time period imposed on the commission to render its decision and enter its order under subsections (2) and (10) of this section and the 80-day time period imposed on the public utilities staff, intervenors or protestants for the filing of all direct testimony, exhibits and other information under Section 77-3-37(7)(b), if the filing utility is granted additional time within which to file the omitted item or items, said 120-day and the 80-day time periods shall be extended by the number of days between the date of the commission's order granting the extension and the date such omitted items are filed with the commission, but such extension of said 120-day and 80-day time periods shall not exceed thirty (30) days.

HISTORY:

Codes, 1942, § 7716-10; Laws, 1956, ch. 372, § 10; Laws, 1983, ch. 467, § 16; Laws, 1985, ch. 302, § 2; Laws, 1988, ch. 310, § 3; Laws, 1992, ch. 417, § 5, eff from and after passage (approved April 29, 1992).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (4). The word "and" was inserted before "(c)." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Refunds to state agencies for excess public utility charges, see § 7-9-22.

Computation of interest to be paid by public utilities on refunds of excess rates, see § 75-17-35.

Direction that, for purposes of retroactive validation and administration of any formula type utility rate, the provisions of this section shall be interpreted to prevail in any conflict with any provisions of such rate, see § 77-3-2.

Determination of whether a hearing is required pursuant to this section when a formula type rate of return evaluation rate with periodic revenue adjustments is adopted by the commission, see § 77-3-2.

Duty of commission, after hearing, to fix just and reasonable rates, see § 77-3-41.

Interest on refunds of fuel adjustment costs or charges found to be unjust or unreasonable, see § 77-3-42.

Order resulting from proceeding under this section not subject to stay as matter of right, see § 77-3-65.

Interest on damages or refunds ordered as result of rehearing, see § 77-3-65.

Interest on refunds of moneys collected under bond pending appeal to chancery court at interim rates subsequently determined to be excessive, see § 77-3-69.

Security and bond required on appeal to supreme court, see § 77-3-71.

Interest on refunds of moneys collected pending direct appeal to supreme court at interim rates subsequently determined by court to be excessive, see § 77-3-72.

Refunding bond required on direct appeal to supreme court, see § 77-3-72.

Provisions of subsections (10) and (15) of this section are not applicable to any proceeding for the change in rates by the commission in connection with a new electric public utitility base load generating facility, see § 77-3-105.

True-up report requesting true-up adjustment of rate reduction bond charge under §§ 77-3-111 through 77-3-127 does not constitute change in rates and is not subject to requirements of Section 77-3-37 or 77-3-39, see § 77-3-119.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Validity and constitutionality.
3. Preclusion of state prudency review by FERC.
4. Bonds.
5. Extension of time.

1. In general.

Utility customers who never sought intervention in a rate increase proceeding never became parties and, therefore, did not have standing to appeal from the final order of the Public Service Commission. North Miss. Util. Co. v. Wentworth, 604 So. 2d 218 (Miss. 1992).

The requirements of both § 77-3-39 and § 77-3-47 must be satisfied whenever there is a request for a rate change, regardless of who initiates it. State ex rel. Pittman v. Mississippi Public Service Com., 538 So. 2d 387, 1989 Miss. LEXIS 10 (Miss. 1989).

The Public Service Commission does not have the authority to grant a rate increase for power never delivered; thus, a utility company was not allowed a rate increase to recover revenue lost during a period of storm damage when it was unable to provide service to its customers. State ex rel. Pittman v. Mississippi Public Service Com., 520 So. 2d 1355, 1987 Miss. LEXIS 2940 (Miss. 1987).

Commission is authorized to establish just and reasonable rates which lead to fair rate of return for utility, fair rate of return being one which, under prudent and economical management, is just and reasonable to both public and utility. State ex rel. Pittman v. Mississippi Public Service Com., 506 So. 2d 978, 1987 Miss. LEXIS 2367 (Miss. 1987), rev'd, 487 U.S. 354, 108 S. Ct. 2428, 101 L. Ed. 2d 322, 1988 U.S. LEXIS 2874 (U.S. 1988).

So long as Public Service Commission examines and considers evidence and testimony of each expert witness who appears in rate change proceeding and does not ignore salient and substantial factors offered into evidence, Commission has prerogative on disputed issue to adopt whichever expert's view it chooses to give credence to; in such case, court cannot disturb Commission's ruling. State ex rel. Pittman v. Mississippi Public Service Com., 481 So. 2d 302, 1985 Miss. LEXIS 2418 (Miss. 1985).

Under § 77-3-39, the Mississippi Public Service Commission abused its discretion in adopting a formula for the determination of the rate base of an electric utility which was unsupported by substantial evidence that the formula was reasonable and best suited for that determination, where the formula adopted a projected test year for rate-making purposes, the formula was more speculative than others, its results were substantially eroded by comparison with the results of the first three months of actual use, and under the circumstances, its adoption was arbitrary. State ex rel. Allain v. Mississippi Public Service Com., 435 So. 2d 608, 1983 Miss. LEXIS 2502 (Miss. 1983).

Mississippi Public Service Commission's order reducing a power company's proposed inclusion of $19,000,000 plus $1,138,500 in the overall rate base attributable to contract adjustments between the electric company and another utility with respect to acquisition of one-half interest by each company in a steam generation plant was supported by the evidence; however, it was clear error for the Commission to base its adjustment of the utility company's maintenance expense projection on a methodology which used trends established in prior years, rather than actual figures for the most recent year. Mississippi Public Service Com. v. Mississippi Power Co., 429 So. 2d 883, 1983 Miss. LEXIS 2524 (Miss.), cert. denied, 464 U.S. 819, 104 S. Ct. 81, 78 L. Ed. 2d 91, 1983 U.S. LEXIS 1096 (U.S. 1983).

On appeal by a public telephone company from an order of the Public Service Commission denying its proposed rate increase and allowing only a 10% overall increase, the chancellor properly exercised his discretion in finding, pursuant to § 77-3-67(4), that the denial of the higher increase sought by the telephone company was not supported by substantial evidence and was against the manifest weight of undisputed evidence, where the commission failed to fix a rate base as required by § 77-3-43, failed to fix a rate of return related to a legally formulated rate base as required by §§ 77-3-33(1) and 77-3-39, and arbitrarily fixed a 10% increase in rates when it appeared certain that compliance with that increase would result in a substantial loss; however, the chancellor erred in fixing a rate base and a rate of return, even though he arrived at amounts warranted by the proof, as § 77-3-67(4) provides instead for a remand of the cause to the commission. Mississippi Public Service Com. v. Hughes Tel. Co., 376 So. 2d 1074, 1979 Miss. LEXIS 2512 (Miss. 1979).

Where the only major conflict in evidence was difference or opinion of two rate experts, and where Commission did not follow either rate expert and did not make a finding of fact to support its ultimate conclusion, order of Commission disapproving proposed increases in rates was not supported by substantial evidence and was against manifest weight of undisputed evidence, requiring vacation of Commission's order. Mississippi Power Co. v. Mississippi Public Service Com., 291 So. 2d 541, 1974 Miss. LEXIS 1727 (Miss. 1974), limited, 337 So. 2d 936, 1976 Miss. LEXIS 1602 (Miss. 1976).

An allowance for extraordinary obsolescence or extensive supersessions of property or equipment is improper. Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

Neither losses sustained nor profits gained are to be given consideration in determining whether a rate increase should be granted. Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

2. Validity and constitutionality.

In a consumer's action against a power company and telephone company challenging the utilities' statutory authority to raise rates under bond prior to final determination of the authorized rate, the Supreme Court would hold that § 77-3-39 is constitutional, that the consumer had no specific vested property right in a fair and reasonable utility rate, that there was no unlawful delegation of legislative power to the utilities, and that the consumer was not denied due process of law. Mississippi Power Co. v. Goudy, 459 So. 2d 257, 1984 Miss. LEXIS 1960 (Miss. 1984).

3. Preclusion of state prudency review by FERC.

Under Federal Power Act (16 USCS §§ 791a et seq.) and the United States Constitution's supremacy clause, where Federal Energy Regulatory Commission (FERC) has allocated a specified percentage of the capacity costs of a power plant that serves the needs of a utility company's entire system to one of the holding company's operating subsidiaries, the state public utility commission having jurisdiction over the operating subsidiary's retail electric rates must treat the operating subsidiary's FERC-mandated payments for the power plant's costs as reasonably incurred operating expenses for the purpose of setting the subsidiary's retail rates; accordingly, state commission proceedings (1) to determine whether some or all of the costs were not prudently incurred, including evaluation of either the holding company's decision to invest in the power plant or the operating subsidiary's decision to be a party to agreements to construct and operate the plant, or (2) to challenge the reasonableness of FERC's cost allocation, are pre-empted by federal law, since (1) FERC has exclusive authority to determine the reasonableness of wholesale rates, (2) FERC's exclusive jurisdiction applies not only to rates but also to power allocations that affect wholesale rates, and (3) states may not bar regulated utilities from passing through to retail consumers FERC-mandated wholesale rates. Mississippi Power & Light Co. v. Mississippi, 487 U.S. 354, 108 S. Ct. 2428, 101 L. Ed. 2d 322, 1988 U.S. LEXIS 2874 (U.S. 1988).

4. Bonds.

A refunding bond by a utility seeking to put into effect an increase in rates pending a determination of their validity, should continue in effect pending a final determination. Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

5. Extension of time.

The Mississippi Public Service Commission exceeded its statutory authority in adopting a rule providing that the "time periods imposed upon the Commission by Sections [sic] 77-3-39(6) of the Mississippi Code shall not begin to run until such time as an amended filing is made in substantial compliance with these regulations" because the effect of the rule was to extend the statutorily imposed time period within which the Commission is required to hold a hearing. Mississippi Public Service Com. v. Mississippi Power & Light Co., 593 So. 2d 997, 1991 Miss. LEXIS 993 (Miss. 1991).

Commission may not under § 77-3-39 extend time for hearing beyond 6 months prescribed by statute, otherwise it would lose jurisdiction to suspend rates and complete hearing; however, this would not affect the power of Commission to review rates because under § 77-3-41, the Commission may, on reasonable notice, determine just and reasonable rates. Mississippi Power Co. v. Mississippi Public Service Com., 291 So. 2d 541, 1974 Miss. LEXIS 1727 (Miss. 1974), limited, 337 So. 2d 936, 1976 Miss. LEXIS 1602 (Miss. 1976).

RESEARCH REFERENCES

ALR.

Public utility's right to recover cost of nuclear power plants abandoned before completion. 83 A.L.R.4th 183.

Public service commission's implied authority to order refund of public utility revenue. 41 A.L.R.5th 783.

Am. Jur.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 32 (petition or application for rehearing on denial of application for rate increase).

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 35 (complaint by individual consumer against electric company opposing proposed rate increase).

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 131 (complaint, petition, or declaration against electric company for refund of overcharges).

Law Reviews.

1989 Mississippi Supreme Court Review: Mississippi Public Service Commission. 59 Miss. L. J. 792.

§ 77-3-40. Hearing examiners; powers and duties; reports, recommended decisions and orders of examiners; procedures.

(1) The commission is authorized and empowered to employ not more than three (3) hearing examiners to whom the commission may refer such matters as the commission may deem advisable in order to expedite the work of the commission.

(2) The commission may refer any matter requiring a hearing to a hearing examiner for hearing, report and recommendation of an appropriate order or decision thereon by the commission. Subject to the limitations prescribed in this chapter, a hearing examiner to whom a hearing has been referred by order of the commission shall have all the rights, duties, powers and jurisdiction conferred by this chapter upon the commission. The commission may direct

any hearing by the hearing examiner to be held in such place or places within the state as may be determined to be in the public interest and as will best serve the convenience of interested parties. Before any hearing examiner enters upon the performance of duties as an examiner, he shall first take, subscribe to and file with the commission an oath similar to the oath required of members of the commission.

(3) In all cases in which a pending proceeding shall be assigned to a hearing examiner, such examiner shall hear and determine the proceedings and submit his recommended order, but, in the event of a petition to the commission to review such recommended order, the hearing examiner shall take no part in such review.

(4) Any report, order or decision recommended by a hearing examiner with respect to any matter referred for hearing shall be in writing and shall set forth separately findings of fact and conclusions of law and shall be filed with the commission. A copy of such recommended order, report and findings shall be served upon the parties who have appeared in the proceeding.

(5)(a) Prior to any recommended decision or order of an examiner, the parties shall be afforded an opportunity to submit, within the time prescribed by order entered in the cause, unless further extended by order of the commission, for the consideration of the examiner, as the case may be, proposed findings of fact and conclusions of law and briefs or, in its discretion, oral arguments in lieu thereof.

(b) Within the time prescribed by the examiner, the parties shall be afforded an opportunity to file exceptions to the recommended decision or order, provided the time so fixed shall be not less than fifteen (15) days from the date of such recommended decision or order. If exceptions are filed, a complete record of the proceedings before the hearing examiner shall be prepared and shall include the ruling upon each requested finding and conclusion or exception.

(c) When no exceptions are filed within the time specified to a recommended decision or order, such recommended decision or order shall become the order of the commission and shall immediately become effective unless the order is stayed or postponed by the commission; provided, the commission may, on its own motion, review any such matter and take action thereon as if exceptions thereto had been filed.

(d) When exceptions are filed, as herein provided, it shall be the duty of the commission to consider the same and, if sufficient reason appears therefor, to grant such review or make such order or hold or authorize such further hearing or proceeding as may be necessary or proper to carry out the purposes of this chapter. The commission, after review, upon the whole record, or as supplemented by a further hearing, shall decide the matter in controversy and make appropriate order or decision thereon. Briefs and oral argument before the commission shall be permitted if requested by any party of record.

(6) The commission may also refer such matters as the commission may deem advisable in order to expedite the work of the commission to any member

of the commission for hearing, report and recommendation in accordance with the procedures provided in this section, except that the commission member hearing the matter may participate in any review of his recommended order by the commission.

HISTORY:

Laws, 1983, ch. 467, § 17; Laws, 1991, ch. 370, § 1; Laws, 1992, ch. 417, § 6, eff from and after passage (approved April 29, 1992).

Cross References —

Direction that, for purposes of retroactive validation and administration of any formula type utility rate, the provisions of this section shall be interpreted to prevail in any conflict with any provisions of such rate, see § 77-3-2.

JUDICIAL DECISIONS

1. In general.

Public Service Commission may cut off Attorney General's cross-examination of expert witness concerning expert's professional qualifications as compared to qualifications of another expert where Commission is fully familiar with expert's professional qualifications and nothing would be served by repeating before Commission at hearing what is already matter of public record. State ex rel. Pittman v. Mississippi Public Service Com., 481 So. 2d 302, 1985 Miss. LEXIS 2418 (Miss. 1985).

§ 77-3-41. Rates fixed by commission.

Whenever the commission, after hearing had on reasonable notice, finds that the existing rates in effect and collected by any public utility are unjust, unreasonable, materially excessive or insufficient or unreasonably discriminatory, or in anywise in violation of any provision of law, the commission shall determine, and fix by order, the just and reasonable rates which will yield a fair rate of return to the utility for furnishing service, which rates will thereafter be observed and in force. Said rates shall thereupon become the legal rates to be charged and paid until changed.

The commission shall have power, when deemed by it necessary to prevent injury to the business or interest of the people or any public utility of this state in case of any emergency, to permit any public utility to alter, amend or suspend temporarily any existing rates, schedules and orders relating to or affecting any public utility or part of any public utility in this state except as provided in Section 77-3-42.

HISTORY:

Codes, 1942, § 7716-11; Laws, 1956, ch. 372, § 11; Laws, 1978, ch. 507, § 1(1), (2); Laws, 1983, ch. 467, § 18; Laws, 1989, ch. 304, § 2; Laws, 1992, ch. 417, § 7, eff from and after passage (approved April 29, 1992).

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Employment and duties of rate expert and his assistant, see § 77-1-17.

Direction that, for purposes of retroactive validation and administration of any formula type utility rate, the provisions of this section shall be interpreted to prevail in any conflict with any provisions of such rate, see § 77-3-2.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Power of court.

1. In general.

Under Mississippi law, a fair rate of return for a public utility is one that, under prudent and economical management, is just and reasonable to both the public and the utility. Mississippi Power & Light Co. v. Mississippi, 487 U.S. 354, 108 S. Ct. 2428, 101 L. Ed. 2d 322, 1988 U.S. LEXIS 2874 (U.S. 1988).

States may not regulate in areas in which the FERC has properly exercised its jurisdiction to determine just and reasonable wholesale rates or to insure that agreements affecting wholesale rates are reasonable, Congress having drawn a bright line between state and federal authority in the setting of wholesale rates and in the regulation of agreements that affect wholesale rates. Mississippi Power & Light Co. v. Mississippi, 487 U.S. 354, 108 S. Ct. 2428, 101 L. Ed. 2d 322, 1988 U.S. LEXIS 2874 (U.S. 1988).

Under the Federal Power Act (16 USCS §§ 791a et seq.) and the United States Constitution's supremacy clause (Art VI, cl 2), where the Federal Energy Regulatory Commission (FERC) has allocated a specified percentage of the capacity costs of a powerplant that serves the needs of a utility holding company's entire system to one of the holding company's operating subsidiaries, the state public utility commission having jurisdiction over the operating subsidiary's retail electric rates must treat the operating subsidiary's FERC-mandated payments for the powerplant's costs as reasonably incurred operating expenses for the purpose of setting the subsidiary's retail rates; accordingly, state commission proceedings-(1) to determine whether some or all of the costs were not prudently incurred, including evaluation of either the holding company's decision to invest in the power plant or the operating subsidiary's decision to be a party to agreements to construct and operate the plant, or (2) to challenge the reasonableness of the FERC's cost allocation-are pre-empted by federal law, since (1) the FERC has exclusive authority to determine the reasonableness of wholesale rates, (2) the FERC's exclusive jurisdiction applies not only to rates, but also to power allocations that affect wholesale rates, and (3) states may not bar regulated utilities from passing through to retail consumers FERC-mandated wholesale rates. Mississippi Power & Light Co. v. Mississippi, 487 U.S. 354, 108 S. Ct. 2428, 101 L. Ed. 2d 322, 1988 U.S. LEXIS 2874 (U.S. 1988).

The Public Service Commission may permit, as an item of expense chargeable to ratepayers, the establishment of a reserve for storm damage, and may authorize, as a legitimate expense of operation, annual contributions to those reserves; however, as with expenses for storm damage actually incurred, charges for the establishment of a storm reserve are allowable only after a hearing. State ex rel. Pittman v. Mississippi Public Service Com., 520 So. 2d 1355, 1987 Miss. LEXIS 2940 (Miss. 1987).

Since the rate making authority is legislative in character, it rests within the power of the commission; the authority of the court to enjoin or restrain imposition of confiscatory rates does not carry with it the power to establish the rate. Mississippi Public Service Com. v. Mississippi Power Co., 337 So. 2d 936, 1976 Miss. LEXIS 1602 (Miss. 1976).

Commission may not under § 77-3-39 extend time for hearing beyond 6 months prescribed by statute, otherwise it would lose jurisdiction to suspend rates and complete hearing; however, this would not affect power of Commission to review rates because under § 77-3-41, Commission may, on reasonable notice, determine just and reasonable rates. Mississippi Power Co. v. Mississippi Public Service Com., 291 So. 2d 541, 1974 Miss. LEXIS 1727 (Miss. 1974), limited, 337 So. 2d 936, 1976 Miss. LEXIS 1602 (Miss. 1976).

Where a franchise granted by a city to a gas company provided that the rates then fixed should be effective as long as they remained fair or were changed or altered as provided by law, and subsequently the legislature withdrew from municipalities the right to fix rates, remedy of city in opposing gas company's rate change was before the public service commission. United Gas Corp. v. Philadelphia, 238 Miss. 409, 118 So. 2d 618, 1960 Miss. LEXIS 420 (Miss. 1960).

In rate-making proceedings, rates for the future are usually based on actual operating experience for a representative period, with adjustment for changes that appear definite and certain. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

The reasonableness or unreasonableness of the rates charged, or to be charged, by a public utility for its service or product is not to be determined by any definite rule or legal formula, and is not measurable with any great degree of exactness, but is a question of fact calling for the exercise of sound discretion, good sense, and a fair, enlightened, and independent judgment, and in determining whether a rate is

reasonable, each case must rest on its special facts. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

A rate of return in the range of 4.96 per cent to 5.08 per cent on the reasonable value of a telephone company's interstate property, while low as compared with the rates allowed in other jurisdictions, is not confiscatory, and it cannot be said that such rates are unjust or unreasonable, or that the rate of return itself is not a fair rate of return. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

Since the function of rate making is purely legislative in character, a court is without power to fix the rates to be charged by public utilities, but may restrain the imposition of confiscatory rates, or, under the Public Utility Act, determine whether rates as fixed are supported by substantial evidence, or within the other statutory restrictions set forth in Code 1942, § Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

A utility is entitled to rates which will yield a fair return upon the reasonable value of property used or usable in furnishing services. Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

A rate established by the commission is not necessarily unreasonable because of uncertainty as to whether it will yield a fair return. Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

2. Power of court.

The language used by the chancellor, which remanded the matter to the Public Service Commission and directed the allowance of specified rate increases, was an improper attempt to set a rate increase in direct contravention of the statute. Mississippi PSC v. Dixie Land & Water Co., 707 So. 2d 1086, 1998 Miss. LEXIS 17 (Miss. 1998).

RESEARCH REFERENCES

ALR.

Public utilities: validity of preferential rates for elderly or low-income persons. 29 A.L.R.4th 615.

Propriety of considering capital structure of utility's parent company or subsidiary in setting utility's rate of return. 80 A.L.R.4th 280.

CJS.

73B C.J.S., Public Utilities §§ 44-103, 265, 269-273, 274.

Practice References.

Accounting for Public Utilities (Matthew Bender).

§ 77-3-42. Rate increase resulting from fuel adjustment clauses or riders; audits of fuel purchases.

(1)(a) No public utility, the rates of which are subject to regulation under the provisions of this chapter, shall increase its rate or rate schedule in addition to its base rate as a result of what is commonly referred to as "fuel adjustment clauses" increase or "fuel adjustment riders" if the application of such clause or rider shall result in ultimate cost recovery exceeding the actual cost of fuel burned or consumed in its generating facilities and the cost of purchased energy.

(b) For the purpose of such fuel adjustment clause or rider, the cost of fuel as used herein shall include only the actual cost of the fuel and its transportation and may include such other cost items which are as of the effective date of this section allowed by the federal energy regulatory commission for inclusion in wholesale fuel adjustment clauses under its jurisdiction. In addition thereto fuel cost may include direct costs associated with burning the fuel at the generating plant such as fuel handling expenses and the cost of fuel sampling and analysis.

(2)(a) The commission is hereby directed to cause a continuous monitoring by the public utilities staff and a complete audit, as necessary but not less than annually, of all fuel purchases for which fuel adjustment clauses or riders have been placed in effect prior to and after the effective date of this section, which shall totally verify fuel costs as might be consumed in generating plants and all purchased energy of such electric utilities in Mississippi with said audit being based upon generally accepted auditing standards which would accurately provide detailed information as to the actual monthly utility fuel costs. Such audit shall be completely independent of any audit performed on behalf of such utility.

(b) The commission is hereby directed to promulgate rules and regulations, not inconsistent with the laws, (i) to define allowable costs for inclusion in fuel adjustments, (ii) to establish guidelines for defining what elements constitute a just and reasonable fuel adjustment clause or rider, (iii) to establish guidelines for defining what elements constitute efficient and economical procurement and use of energy and fuel, and (iv) to establish general guidelines for making the required review of fuel adjustment clauses or riders as required by this section. Such rules and regulations shall be spread upon the minutes of the commission.

(c) Such audits shall include (i) a determination if fuel and associated costs are properly identified and recorded in the appropriate uniform system of accounts, (ii) a determination if purchased energy and associated costs are properly identified, (iii) an assessment of a utility's practices for economical purchase and use of fuel and electric energy, and (iv) an assessment of the relevant contract terms and conditions and any variations from contract terms.

(3) The audits required by this section shall extend to the fuel acquisition activities of any corporation which is owned in whole or in part by any such public utility under the jurisdiction of the commission or owned in whole or in part by a public utility holding company which is the parent company of any public utility under the jurisdiction of the commission. Public utilities under the jurisdiction of this commission, the rates of which are subject to regulation under the provisions of this chapter, shall not purchase fuel and/or energy from a company or corporation which is owned in whole or in part by that public utility or by the parent company of that public utility unless the selling company or corporation assents to audits as provided for under this section.

(4) Upon receipt of each audit report, the certified public accountant of the public utilities staff shall review the report and furnish the commissioners with a written summary of, and his comments on, the report. The commission shall meet within one (1) week after receipt of the accountant's summary, and shall spread upon the minutes of the commission that it has reviewed said summary and further shall describe any action which it takes regarding the audit report or the fact that no action was required. Any costs included in a fuel adjustment clause or rider by a public utility under the jurisdiction of the commission found in violation of this section shall, by order of the commission, be refunded to the appropriate person or persons. In lieu of payment, the utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility.

(5) Periodically, and not less frequently than annually, the commission shall review the audit reports, the reports of the certified public accountant of the public utilities staff, any reports of the public utilities staff relating to its monitoring of fuel purchases, and all other relevant information relating to fuel purchases, fuel adjustment clauses or riders, and purchased energy for the purpose of determining (a) whether or not the utility is properly and correctly employing the use of the fuel adjustment clause or rider applicable to its operations and billing procedures, (b) whether or not the utility has engaged in practices in the acquisition of fuel or purchased energy which are efficient and economical, and (c) whether or not there is reason to question the practices, contracts, operations or procedures of the utility in the purchase or acquisition of fuel or purchased energy relative to efficiency, economy and the public interest.

If the commission, after following the procedures described above, has reasonable cause to believe that inefficient or uneconomical procurement or use of fuel or purchased energy has resulted in unreasonable or unjust charges or costs to the consumers, then the commission shall initiate a procedure for hearing as provided for in Section 77-3-47 for the purpose of determining whether or not any of the costs or charges included in the fuel adjustment charges to the consumers were unreasonable or unjust. If the commission upon hearing shall find that any charges for the purchase or procurement of fuel or purchased energy were unreasonable or unjust, then the commission shall order that such costs or charges be refunded to the appropriate person or persons together with interest at the same rate prescribed in Section 77-3-39, Section 77-3-69 and Section 77-3-71. In lieu of payment, the utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility.

(6)(a) The commission shall maintain at all times complete and current data relating to sales and purchases of electric capacity of all utilities, including copies of contracts and agreements for the purchase of electric capacity, amendments to such contracts, records of purchases and sales of electric capacity, and all other relevant information and data deemed appropriate by the commission for carrying out the provisions of this section.

(b) The commission is hereby directed to review, not less frequently than annually, the information and data described above. If, from said review the commission has reasonable cause to believe that inefficient or uneconomical sales or purchases of electric capacity by a utility, the rates of which are subject to regulation by the commission, have resulted in unreasonable or unjust charges or costs to the consumers, then the commission shall initiate a procedure for hearing as provided for in Section 77-3-47 for the purpose of determining whether or not any of the costs or charges for sales or purchases of electric capacity included in the charges to consumers were unreasonable or unjust. If the commission, upon hearing, shall find that any such charges for the sale or purchase of electric capacity were unreasonable or unjust, then the commission shall order that such costs or charges be refunded to the appropriate person or persons, together with interest thereon at the same rate prescribed in Section 77-3-39, Section 77-3-69 and Section 77-3-71. In lieu of payment, the utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility.

(7) The commission shall provide a full and complete report of said audits to the legislature on or before January 15 of each year. The report shall include certification by the commission that the information is true and correct as well as other clarifications of the audit information and any recommendations for correcting imperfections in statutes relative to existing fuel or purchased gas adjustments.

(8) Nothing in this section shall prohibit the commission from entering an order in a declared emergency allowing public utilities under such emergency circumstances to adjust their rates for a period not to exceed sixty (60) days upon declaration of said emergency. There shall be a full hearing and a complete and total accounting as to total costs of said commission order to public utilities customers, with detailed accounting of such emergency fuel adjustment clause order being made available to the public.

(9) This section shall not apply to a municipality, including a joint agency organized pursuant to Sections 77-5-701 et seq., as amended.

HISTORY:

Laws, 1978, ch. 507, § 1(3); Laws, 1983, ch. 467, § 19, eff from and after passage (approved April 6, 1983).

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Direction that, for purposes of retroactive validation and administration of any formula type utility rate, the provisions of this section shall be interpreted to prevail in any conflict with any provisions of such rate, see § 77-3-2.

Provisions of this section constituting exception to power of commission to permit temporary changes or suspensions of rates, schedules or orders, see § 77-3-41.

JUDICIAL DECISIONS

1. In general.

The Public Service Commission does not have the authority to grant a rate increase for power never delivered; thus, a utility company was not allowed a rate increase to recover revenue lost during a period of storm damage when it was unable to provide service to its customers. State ex rel. Pittman v. Mississippi Public Service Com., 520 So. 2d 1355, 1987 Miss. LEXIS 2940 (Miss. 1987).

RESEARCH REFERENCES

ALR.

Validity of "fuel adjustment" or similar clauses authorizing electric utility to pass on increased cost of fuel to its customers. 83 A.L.R.3d 933.

Am. Jur.

15 Am. Jur. Legal Forms 2d, Public Utilities § 215:10 (report on changes in rate schedule).

15 Am. Jur. Legal Forms 2d, Public Utilities § 215:18 (rates under special conditions-autho-

rization for riders).

CJS.
73B C.J.S., Public Utilities §§ 44-103, 265, 269-273, 274.

Practice References.
Accounting for Public Utilities (Matthew Bender).

§ 77-3-43. Determination of rate base.

(1) In regulating the rates of any public utility subject to the provisions of this chapter, the commission shall, on hearing after reasonable notice, ascertain and fix the rate base of the property of the public utility in such manner as to be fair both to the public utility and to the consumer when the same is relevant or material to the exercise of the jurisdiction of the commission. The commission shall make readjustments from time to time, and ascertain the cost of all new construction, extensions and additions to the property of every public utility. In arriving at such rate base, the commission shall give due consideration to: (a) the reasonable original costs of the property used and useful, or to be used and useful within a reasonable time after the test period; (b) the portion of the cost which has been consumed by previous use recovered by depreciation expense; (c) the allowance for funds used during construction, not to exceed on borrowed funds the true net interest cost of such funds, computed according to the actuarial method, and, on the equity component thereof, a rate of return granted on common equity in the last rate proceedings before the commission, or if such rate has not been established within the preceding three (3) years, then the average rate of return actually earned on equity during the preceding three (3) years; (d) any other elements deemed by the commission to be material in determining the rate base for rate-making purposes.

(2) Valuations of property of such a public utility for rate-making purposes shall not include property purchased, labor supplied or services rendered by any firm or corporation owned or controlled in whole or in part, directly or indirectly, by such public utility, or which owns or controls in whole or in part, directly or indirectly, such public utility, unless such firm or corporation permits the commission to have access to such of the books and records of such firm or corporation as may be necessary in the opinion of the commission to enable the commission to determine whether such labor, materials, property or services rendered were supplied at reasonable prices. The rate base shall not include property donated to such utility without any consideration nor shall operating expenses include depreciation of such donated property.

(3) Whenever the commission is required in administering this chapter to find the value of gas in the field where produced, such value shall be determined as the amount paid therefor by the public utility in the field pursuant to arm's length contract; and in the absence of such arm's length contract, the fair market value of such gas as a commodity in the field.

(4) The commission, in its discretion, when requested by petition of a rate-jurisdictional public utility providing water service as defined in Section 77-3-3(d) (iv), may allow to be recovered in rates the reasonable costs of used and useful facilities deemed necessary for fire protection. Such facilities

include fire hydrants, transmission and distribution mains, storage facilities, pumping equipment or other facilities associated with the provision of adequate water production, storage and distribution for fire protection.

HISTORY:

Codes, 1942, § 7716-12; Laws, 1956, ch. 372, § 12; Laws, 1983; ch. 467, § 20; Laws, 2002, ch. 455, § 1, eff from and after July 1, 2002.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2). The words "which owns or controls" were substituted for "which owns or control." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Direction that, for purposes of retroactive validation and administration of any formula type utility rate, the provisions of this section shall be interpreted to prevail in any conflict with any provisions of such rate, see § 77-3-2.

JUDICIAL DECISIONS

1. In general.

In a condemnation proceeding, the trial court erred by failing to strike the testimony of the city's expert because his entire appraisal of the value of the private water utility was based on data from Public Service Commission used to determine rates that did not include the value of property contributed by land developers; "contributed property" must be included in the utility plant value for the purpose of condemnation under Miss. Code Ann. § 77-3-17, even though such items were not included for purposes of rate-regulation under Miss. Code Ann. § 77-3-43(2). Dedeaux Util. Co. v. City of Gulfport, 938 So. 2d 838, 2006 Miss. LEXIS 529 (Miss. 2006).

On appeal by a public telephone company from an order of the Public Service Commission denying its proposed rate increase and allowing only a 10% overall increase, the chancellor properly exercised his discretion in finding, pursuant to § 77-3-67(4), that the denial of the higher increase sought by the telephone company was not supported by substantial evidence and was against the manifest weight of undisputed evidence, where the commission failed to fix a rate base as required by § 77-3-43, failed to fix a rate of return related to a legally formulated rate base as required by §§ 77-3-33(1) and 77-3-39, and arbitrarily fixed a 10% increase in rates when it appeared certain that compliance with that increase would result in a substantial loss; however, the chancellor erred in fixing a rate base and a rate of return, even though he arrived at amounts warranted by the proof, as § 77-3-67(4) provides instead for a remand of the cause to the commission. Mississippi Public Service Com. v. Hughes Tel. Co., 376 So. 2d 1074, 1979 Miss. LEXIS 2512 (Miss. 1979).

RESEARCH REFERENCES

ALR.

Advertising or promotional expenditures of public utility as part of operating expenses for ratemaking purposes. 83 A.L.R.3d 963.

Propriety of considering capital structure of utility's parent company or subsidiary in setting utility's rate of return. 80 A.L.R.4th 280.

Am. Jur.

64 Am. Jur. 2d, Public Utilities §§ 98, 102 et seq.

CJS.

73B C.J.S., Public Utilities §§ 83, 104-109, 249, 253, 254, 257.

Practice References.

Accounting for Public Utilities (Matthew Bender).

§ 77-3-44. Rate-regulated electric public utilities authorized to undertake economic development activities.

Any rate-regulated electric or natural gas public utility with certificated service area in Mississippi may undertake economic development activities, whether directly or indirectly, including activities such as providing capital, or investment in or acquisition and development of business or industrial sites and the necessary infrastructure or services needed to attract new or existing businesses or industry, to create or maintain employment opportunities, or otherwise to positively impact or in some manner promote the sale of electric energy or natural gas within its certificated service area. Any facilities developed, constructed or acquired in support of the activities described in this section for which a certificate of public convenience and necessity or other commission approval has been granted after July 1, 2015, as well as any capital investment in natural gas reserves made directly or indirectly by an electric or natural gas public utility to foster long-term stability in the cost of fuel, may be deemed used and useful in the provision of electric or natural gas service regardless of whether or not any end-use customers are taking service from said facilities or investment and otherwise recoverable through the utility's rates.

HISTORY:

Laws, 2015, ch. 360, § 3; Laws, 2017, ch. 322, § 1, eff from and after passage (approved Mar. 10, 2017).

Amendment Notes —

The 2017 amendment, effective March 10, 2017, inserted "or natural gas" everywhere it appears; and substituted "granted after July 1, 2015" for "granted after the effective date of this act" in the last sentence.

§ 77-3-45. Promulgation of rules and regulations.

The commission shall prescribe, issue, amend and rescind such reasonable rules and regulations as may be reasonably necessary or appropriate to carry out the provisions of this chapter. No rule or regulation shall be effective until thirty (30) days after a notice setting forth either the terms or substance thereof or a description of the subjects and issues involved and the time and place of a hearing thereon shall have been published in a newspaper of general circulation in the state. The commission shall file the notice with the Secretary of State pursuant to the Mississippi Administrative Procedures Law and mail a copy of it to all affected public utilities. The commission shall mail a copy of the proposed rule or regulation to any public utility that requests a copy. The hearing may be held at any time twenty (20) days after date of publication of the notice, but the rules or regulations shall not become effective until a hearing thereon. A proceeding to contest any rule or regulation due to noncompliance with the procedural requirements of this section must be commenced within one (1) year from the effective date of the rule or regulation. All rules and regulations of the commission shall be filed with its executive secretary and shall be readily available for public inspection and examination during reasonable business hours. Any interested person shall have the right to petition the commission for issuance, amendment or repeal of a rule or regulation.

The commission shall, in the exercise of its power to promulgate rules and regulations, adopt standard practices and procedures:

(a) To specify what costs may be used for determining a public utility's rate base, which balance the interests of consumers and investors;

(b) To prescribe the time period for measuring a public utility's rate base;

(c) To specify allowable operating expenses, provided, however, that the commission shall exclude from a public utility's allowable operating expenses any interest such utility paid, or credited, to its consumers in connection with refunds in a rate proceeding in which its rates were finally determined to be excessive;

(d) To determine accurately the capital costs of a public utility;

(e) To define specific costs which may be included by a public utility in its monthly fuel adjustment clause retail billings;

(f) To define specific costs which may be included by a public utility distributing gas in its monthly purchased gas adjustments retail billings;

(g) To prescribe minimal uniform standards of service for various classes of public utilities; and

(h) To provide for any other rules and regulations deemed by the commission to be appropriate for carrying out the provisions of this chapter.

HISTORY:

Codes, 1942, § 7716-13; Laws, 1956, ch. 372, § 13; Laws, 1983, ch. 467, § 21; Laws, 1993, ch. 420, § 1, eff from and after July 1, 1993.

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

Direction that, for purposes of retroactive validation and administration of any formula type utility rate, the provisions of this section shall be interpreted to prevail in any conflict with any provisions of such rate, see § 77-3-2.

Duty of public utilities staff to make recommendations concerning standards, regulations, practices, or services, see § 77-3-8.

Generation and transmission cooperatives subject only to provisions of §§ 77-3-11, 77-3-13, 77-3-14, 77-3-23, 77-3-25, 77-3-27 and 77-3-45, see § 77-5-256.

JUDICIAL DECISIONS

1. In general.

The Mississippi Public Service Commission exceeded its statutory authority in adopting a rule which provided that the deposition of a witness could be taken upon agreement of the parties or in the discretion of the Commission since § 77-3-51 clearly gives the right to take and use a deposition only upon agreement of the parties. Mississippi Public Service Com. v. Mississippi Power & Light Co., 593 So. 2d 997, 1991 Miss. LEXIS 993 (Miss. 1991).

The adoption of rules providing a procedure not permitted by § 77-3-13(3) for the suspension and voiding of a certificate of convenience and necessity exceeded the authority of the Mississippi Public Service Commission, and the rules were therefore invalid. Mississippi Public Service Com. v. Mississippi Power & Light Co., 593 So. 2d 997, 1991 Miss. LEXIS 993 (Miss. 1991).

The Mississippi Public Service Commission exceeded its authority in adopting a rule requiring a utility to provide written notice to its customers of the utility's filing for any certificate because § 77-3-13(3) provides that the Commission shall give the notice required, and therefore the rule would transfer this duty to the utilities contrary to the provisions of the statute. Mississippi Public Service Com. v. Mississippi Power & Light Co., 593 So. 2d 997, 1991 Miss. LEXIS 993 (Miss. 1991).

The amendments to § 77-3-37(6) and (8), effective July 1, 1990, were sufficient to remove any objections pertaining to the Mississippi Public Service Commission's authority to issue a rule allowing a deficiency in designation to be noted by the staff or any party within 30 days, and therefore the rule was valid even though it conflicted with both subsections of the statute as they existed prior to Mississippi Public Service Com. v. Mississippi Power & Light Co., 593 So. 2d 997, 1991 Miss. LEXIS 993 (Miss. 1991).

The Mississippi Public Service Commission exceeded its statutory authority in adopting a rule providing that the "time periods imposed upon the Commission by Sections [sic] 77-3-39(6) of the Mississippi Code shall not begin to run until such time as an amended filing is made in substantial compliance with these regulations" because the effect of the rule was to extend the statutorily imposed time period within which the Commission is required to hold a hearing. Mississippi Public Service Com. v. Mississippi Power & Light Co., 593 So. 2d 997, 1991 Miss. LEXIS 993 (Miss. 1991).

Letters from public officials and commercial establishments expressing interest in proposed new service were properly considered by the Mississippi Public Service Commission, and supported the Commission's order granting a certificate of public convenience and necessity to own and operate a radio transmitted paging service. New South Communications, Inc. v. Answer Iowa, Inc., 490 So. 2d 1225, 1986 Miss. LEXIS 2502 (Miss. 1986).

Administrative bodies are not ordinarily bound by strict rules of evidence. New South Communications, Inc. v. Answer Iowa, Inc., 490 So. 2d 1225, 1986 Miss. LEXIS 2502 (Miss. 1986).

The commission has the power to make rules and regulations. Capital Electric Power Asso. v. Mississippi Power & Light Co., 216 So. 2d 428, 1968 Miss. LEXIS 1229 (Miss. 1968).

Where the order of the public service commission authorizing a public utility to construct on its own rights-of-way an electric line to provide standby auxiliary service to its properly authorized substation which was located in an area certificated to another utility was supported by substantial evidence, it was affirmed. Capital Electric Power Asso. v. Mississippi Power & Light Co., 216 So. 2d 428, 1968 Miss. LEXIS 1229 (Miss. 1968).

§ 77-3-46. Management reviews of public utility companies.

Notwithstanding any other provisions of this chapter, the commission may, in its discretion, initiate a management review of any public utility company, the rates of which are subject to regulation under the provisions of this chapter and which has in excess of twenty-five thousand (25,000) customers, once every five (5) years, and at such other times deemed necessary by the commission as determined by it during a hearing, by a competent, qualified and independent firm, such review to examine thoroughly the efficiency and effectiveness of management decisions among other factors as directed by the commission. Such public utility shall render to the commission for such purpose books, records and other items prescribed by the commission. The cost of such review is to be borne by the particular public utility subject to the review; provided, however, that carriers subject to regulation by and auditing of the interstate commerce commission shall not be required to bear the expense of additional management review required hereunder.

Whenever the commission is of the opinion that it is in the public interest to do so, the commission may in its discretion initiate a management review of any other public utility company, the rates of which are subject to regulation under the provisions of this chapter, in accordance with the procedures set forth above in this section.

The commission shall not contract for such management review with any firm that has within three (3) years prior thereto performed a financial audit on behalf of such public utility nor on behalf of any affiliate, subsidiary, holding or parent company.

HISTORY:

Laws, 1983, ch 467, § 22, eff from and after passage (approved April 6, 1983).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first paragraph, by substituting "which has in excess of twenty-five thousand (25,000) customers" for "which has in excess a twenty-five thousand (25,000) customers." The Joint Committee ratified the correction at its July 22, 2010, meeting.

RESEARCH REFERENCES

ALR.

Propriety of considering capital structure of utility's parent company or subsidiary in setting utility's rate of return. 80 A.L.R.4th 280.

§ 77-3-47. Hearings by commission.

The commission may, in addition to the hearings specifically provided for by this chapter, conduct such other hearings as may be deemed necessary in the administration of the powers and duties conferred upon it by this title.

The commission shall fix the time and place of hearings and shall serve notice thereof, not less than twenty (20) days before the time set for such hearings, unless the commission shall find that public convenience or necessity requires that such hearings be held at an earlier date. The commission may dismiss any complaint without a hearing if in its opinion a hearing is not necessary in the public interest or for the protection of substantial rights. Notice of all such hearings shall be given the persons interested therein by mailing such notice to each public utility which may be affected by any order resulting therefrom and by publication in a newspaper of general circulation published in Jackson, Mississippi, and, in a proceeding for a facility certificate or an area certificate, by publication in a newspaper of general circulation in the county or counties where the facility or area is located. In addition to any other notice requirements prescribed in this section, notice of a hearing regarding a major change in rates and schedules, as defined in Section 77-3-37(8), by a public utility of the type defined in Section 77-3-3(d)(iv) shall be published in a newspaper having general circulation in an area where service is being provided by the public utility.

At the time fixed for any hearing before the commission, or the time to which the same may have been continued, the complainant and the person complained of shall be entitled in person or by attorney to be heard and to introduce evidence.

HISTORY:

Codes, 1942, § 7716-14; Laws, 1956, ch. 372, § 14; Laws, 1978, ch. 448, § 1; Laws, 1983, ch. 467, § 23; Laws, 1990, ch. 530, § 40; Laws, 1992, ch. 417, § 8; Laws, 1997, ch. 540, § 2, eff from and after July 1, 1997.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision, and Publication corrected a typographical error in Section 2 of ch. 540, Laws, 1997. In the last sentence of the second paragraph of this section, the reference to Section 77-3-7(8) was changed to 77-3-37(8). The Joint Committee ratified the correction at the May 8, 1997, meeting of the Committee.

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Direction that, for purposes of retroactive validation and administration of any formula type utility rate, the provisions of this section shall be interpreted to prevail in any conflict with any provisions of such rate, see § 77-3-2.

Applicability of this section to hearings on rate changes, see § 77-3-39.

Duty of commission, after hearing, to fix just and reasonable rates, see § 77-3-41.

Hearing to determine reasonableness or justness of costs or charges included in fuel adjustment charges, see § 77-3-42.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Notice.

1. In general.

Mississippi Public Service Commission did not commit reversible error in denying a resident a hearing when it dismissed his complaint challenging the Commission's decision to grant a Supplemental Certificate of Public Convenience and Necessity (CCN) to a water, sewer, and fire district because the resident's rights were not infringed by the lack of a hearing, and the public interest would not have been served by granting the resident a hearing, which would have been futile; Miss. Code R. § 26-000-001 and Miss. Code Ann. § 77-3-47 authorize the Commission to dismiss a complaint without a hearing, and a hearing is not necessary in the public interest or for the protection of substantial rights. Green v. Cleary Water, Sewer & Fire Dist., 17 So. 3d 559, 2009 Miss. LEXIS 430 (Miss. 2009), cert. denied, 559 U.S. 971, 130 S. Ct. 1691, 176 L. Ed. 2d 181, 2010 U.S. LEXIS 2154 (U.S. 2010).

Utility customers who never sought intervention in a rate increase proceeding never became parties and, therefore, did not have standing to appeal from the final order of the Public Service Commission. North Miss. Util. Co. v. Wentworth, 604 So. 2d 218 (Miss. 1992).

The requirements of both § 77-3-39 and § 77-3-47 must be satisfied whenever there is a request for a rate change, regardless of who initiates it. State ex rel. Pittman v. Mississippi Public Service Com., 538 So. 2d 387, 1989 Miss. LEXIS 10 (Miss. 1989).

Public Service Commission may cut off Attorney General's cross-examination of expert witness concerning expert's professional qualifications as compared to qualifications of another expert where Commission is fully familiar with expert's professional qualifications and nothing would be served by repeating before Commission at hearing what is already matter of public record. State ex rel. Pittman v. Mississippi Public Service Com., 481 So. 2d 302, 1985 Miss. LEXIS 2418 (Miss. 1985).

So long as Public Service Commission examines and considers evidence and testimony of each expert witness who appears in rate change proceeding and does not ignore salient and substantial factors offered into evidence, Commission has prerogative on disputed issue to adopt whichever expert's view it chooses to give credence to; in such case, court cannot disturb Commission's ruling. State ex rel. Pittman v. Mississippi Public Service Com., 481 So. 2d 302, 1985 Miss. LEXIS 2418 (Miss. 1985).

Failure of landowners to comply with 30 day requirement for appeal would be excused, since the owners did not receive the notice required by § 77-3-47, and since, to require owners to appeal an order affecting them and about which they had absolutely no knowledge or notice, would have been contrary to the due process requirements of either the state or federal constitutions. Mississippi Power & Light Co. v. Conerly, 460 So. 2d 107, 1984 Miss. LEXIS 2080 (Miss. 1984).

2. Notice.

Supreme court had jurisdiction over the orders of the Mississippi Public Service Commission denying a resident's motion to amend his complaint challenging the grant of a Supplemental Certificate of Public Convenience and Necessity (CCN) to a water, sewer and fire district and dismissing the complaint but not over the grant of the supplemental CCN because the resident attempted to appeal the supplemental CCN decision by way of appealing the Commission's orders, and the appeal was untimely since it was filed more than four years after the order granting the supplemental CCN; the Commission filed a timely notice in a newspaper that a decentralized system would be implemented, and the resident was notified of the planned implementation when the district adopted an ordinance, published notice concerning the adoption of the ordinance, and then passed the ordinance after a public hearing at which no one expressed opposition. Green v. Cleary Water, Sewer & Fire Dist., 17 So. 3d 559, 2009 Miss. LEXIS 430 (Miss. 2009), cert. denied, 559 U.S. 971, 130 S. Ct. 1691, 176 L. Ed. 2d 181, 2010 U.S. LEXIS 2154 (U.S. 2010).

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Utilities § 178.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Forms 6, 7 (notice of hearing).

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 37 (order directing commission investigation into reasonableness of rates).

Law Reviews.

1987 Mississippi Supreme Court Review, Mississippi Public Service Commission. 57 Miss. L. J. 440.

1989 Mississippi Supreme Court Review: Mississippi Public Service Commission. 59 Miss. L. J. 792.

§ 77-3-49. Issuance of process by commission; witnesses.

The commission may issue subpoenas, subpoenas duces tecum and all necessary process in proceedings pending before it. Such process shall extend to all parts of the state and may be served by any person authorized to serve process of courts of record. All process issued by the commission shall be signed by the chairman or secretary of the commission, and the seal of the commission shall be affixed thereto.

The commission and each of the commissioners, for the purpose mentioned in this article, may administer oaths, examine witnesses and certify official acts.

In case of failure on the part of any person or persons to comply with any lawful order of the commission, or with any subpoena or subpoenas duces tecum, or in the case of the refusal of any witness to testify concerning any matter on which he may be interrogated lawfully, any court of record of general jurisdiction or a judge thereof, may on application of the commission compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

HISTORY:

Codes, 1942, §§ 7716-15, 7716-16; Laws, 1956, ch. 372, §§ 15, 16.

§ 77-3-51. Depositions by agreement.

Upon agreement of the parties in any proceeding, depositions of any witnesses may be taken and used in evidence pursuant to procedure for taking depositions which may be prescribed by rules and regulations of the commission.

HISTORY:

Codes, 1942, § 7716-17; Laws, 1956, ch. 372, § 17.

JUDICIAL DECISIONS

1. In general.

The Mississippi Public Service Commission exceeded its statutory authority in adopting a rule which provided that the deposition of a witness could be taken upon agreement of the parties or in the discretion of the Commission since § 77-3-51 clearly gives the right to take and use a deposition only upon agreement of the parties. Mississippi Public Service Com. v. Mississippi Power & Light Co., 593 So. 2d 997, 1991 Miss. LEXIS 993 (Miss. 1991).

§ 77-3-53. Certified copies of documents and orders as evidence.

Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary under the official seal of the commission to be true copies of the original shall be evidence in like manner as the originals, in all matters before the commission and in the courts of this state, or any other state or jurisdiction.

HISTORY:

Codes, 1942, § 7716-18; Laws, 1956, ch. 372, § 18.

Cross References —

Authority of public officers to certify copies of books, records and the like in their custody and as to the admissibility of such copies in evidence, see § 13-1-77.

§ 77-3-55. Orders, findings, authorizations and certificates to be in writing and entered in minutes.

Every order, finding, authorization or certificate issued or approved by the commission under any provisions of this article shall be in writing and entered on the minutes of the commission. A certificate under the seal of the commission that any such order, finding, authorization or certificate has not been modified, stayed, suspended or revoked, shall be received as evidence in any proceeding as to the facts therein stated.

HISTORY:

Codes, 1942, § 7716-19; Laws, 1956, ch. 372, § 19.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Utilities § 181.

CJS.

73B C.J.S., Public Utilities §§ 224-238.

§ 77-3-57. Service on parties.

Service in all hearings, investigations and proceedings pending before the commission shall be made personally in the manner in which process is required by law to be served or by registered or certified mail, as the commission may direct.

HISTORY:

Codes, 1942, § 7716-21; Laws, 1956, ch. 372, § 21.

Cross References —

Duty of sheriff to return process on or before return day, see § 13-3-37.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities § 178.

§ 77-3-59. Decisions; compliance with orders.

The commission shall make and file its findings and order, and its opinion, if any. All findings shall be supported by substantial evidence presented and shall be in sufficient detail to enable the court on appeal to determine the controverted questions presented, and the basis of the commission's conclusion. A copy of such order certified under the seal of the commission, shall be served upon the person against whom it runs, or his attorney, and notice thereof shall be given to the other parties to the proceedings or their attorneys. Said order shall take effect twenty (20) days after the service thereof, unless otherwise provided, and shall continue in force, either for a period which may be designated therein or until changed or revoked by the commission. If an order cannot, in the judgment of the commission, be complied with within twenty (20) days, the commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

HISTORY:
Codes, 1942, § 7716-22; Laws, 1956, ch. 372, § 22; Laws, 1992, ch. 417, § 9, eff from and after passage (approved April 29, 1992).

Cross References —
Enforcement of commission orders, see § 77-3-75.

JUDICIAL DECISIONS

1. In general.
Mississippi Public Service Commission's (Commission) order regarding an increase in rates for water service provided by the company was not supported by substantial evidence and was contrary to the manifest weight of the evidence, Miss. Code Ann. § 77-3-59; in fixing the rate, the Commission did not evidence its expertise by incorporating in its order cogent reasons for its decision based on a finding of facts pertinent to the particular inquiry before it. Total Envtl. Solutions, Inc. v. Miss. PSC, 988 So. 2d 372, 2008 Miss. LEXIS 337 (Miss. 2008).

Public Service Commission (PSC) order fixing utility rates should set forth basis on which rates are fixed in accordance with law applicable thereto; otherwise, courts are seriously hampered in review of such order. White Cypress Lakes Water v. Mississippi PSC, 703 So. 2d 246, 1997 Miss. LEXIS 462 (Miss. 1997).

In fixing utility rates, Public Service Commission (PSC) should evidence its expertise by incorporating in its order cogent reasons for its decision based on finding of facts pertinent to particular inquiry before it. White Cypress Lakes Water v. Mississippi PSC, 703 So. 2d 246, 1997 Miss. LEXIS 462 (Miss. 1997).

Public Service Commission (PSC) did not make sufficient findings of fact in its order denying rate increase to water utility; relevant portion of order merely stated that utility was not providing adequate service with money currently available and thus was not entitled to increase, Commission did not set forth persuasive evidence or conclusions drawn from evidence which it used in reaching decision, and Supreme Court on appeal was placed in awkward position of trying to ferret out sufficient evidence from record. White Cypress Lakes Water v. Mississippi PSC, 703 So. 2d 246, 1997 Miss. LEXIS 462 (Miss. 1997).

Letters from public officials and commercial establishments expressing interest in proposed new service were properly considered by the Mississippi Public Service Commission, and supported the Commission's order granting a certificate of public convenience and necessity to own and operate a radio transmitted paging service. New South Communications, Inc. v.

Answer Iowa, Inc., 490 So. 2d 1225, 1986 Miss. LEXIS 2502 (Miss. 1986).

The public service commission did not commit reversible error in granting a certificate of public convenience and necessity to a new telephone common carrier, even though its order did not contain detailed findings of fact. Mississippi Public Service Com. v. AAA Anserphone, Inc., 372 So. 2d 259, 1979 Miss. LEXIS 2024 (Miss. 1979).

In an electric utility rate proceeding, the Chancellor properly found that the Public Service Commission gave no consideration to coverages required for loans and preferred stock sales, where close examination of the commission's findings and order revealed no treatment therein of coverages, as such, but only as coverages were included in its decision that the rate allowed was sufficient to assure confidence in the integrity of the utility's finances, so as to maintain its credit and to attract capital. Mississippi Public Service Com. v. Mississippi Power Co., 366 So. 2d 656, 1979 Miss. LEXIS 2204 (Miss. 1979).

The basis of judicial review of the actions of the public service commission is the substantial evidence rule. Capital Electric Power Asso. v. Mississippi Power & Light Co., 216 So. 2d 428, 1968 Miss. LEXIS 1229 (Miss. 1968).

Evidence of depreciated original cost of a utility's property, particularly if a considerable part is of relatively recent construction, is sufficient to support a determination of the reasonable value upon which the utility is entitled to a fair return. Southern Bell Tel. & Tel. Co. v. Mississippi Public Service Com., 237 Miss. 157, 113 So. 2d 622, 1959 Miss. LEXIS 459 (Miss. 1959).

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities § 181.
20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Forms 8-10, 26, 37, 50 et seq. (orders of commission).

§ 77-3-61. Alteration of orders.

The commission may at any time, after notice, and after opportunity to be heard as provided in Section 77-3-47, rescind or amend any order or decision made by it. Any order rescinding or amending a prior order or decision shall, when served upon the utility affected and after notice thereof is given to the other parties to the proceedings, have the same effect as original orders or decisions. However, no such order shall affect the legality or validity of any acts done by said utility before service upon it of the notice of such change.

HISTORY:
Codes, 1942, § 7716-23; Laws, 1956, ch. 372, § 23.

JUDICIAL DECISIONS

1. In general.

A Public Service Commission (PSC) ruling, which overruled a prior PSC decision by ordering a reduction of a utility company's water and sewer rates, was not arbitrary and capricious because the PSC may at any time amend or rescind an order, it is within the purview of the PSC to determine the weight of the evidence and the credibility of the witnesses, and the utility company's failure to follow its service extension policy amounted to a major change in fact since the issuance of the prior order. Rankin Utility Co. v. Mississippi Public Service Com., 585 So. 2d 705, 1991 Miss. LEXIS 503 (Miss. 1991).

§ 77-3-63. Record of proceedings; reporter.

A full and complete record shall be kept of all proceedings had before the commission or any commissioner or any formal hearing. All testimony shall be taken down by a reporter appointed by the commission, whose qualifications and compensations shall be the same as now provided by law for the circuit and chancery court reporters.

HISTORY:
Codes, 1942, § 7716-24; Laws, 1956, ch. 372, § 24.

Cross References —
Compensation of court reporters, see § 9-13-9.

Qualifications and certification of court reporters, see §§ 9-13-101 et seq.

§ 77-3-65. Rehearing; stay of order.

After an order or decision has been made by the commission, any party to the proceedings may, within thirty (30) days after the entry of the order or decision, apply for a rehearing in respect of any matters determined in said proceedings and specified in the application for rehearing, and the commission may grant and hold such rehearings on such matters.

The filing of an application for rehearing shall not stay or suspend the effective date of any commission order or the obligation of any person to comply in all respects with such order unless the commission shall, in the exercise of its discretion, stay, suspend or modify such order. Any party to the proceedings shall be entitled to a stay of the order, other than an order resulting from a proceeding under Section 77-3-39, as a matter of right, upon filing with the commission a bond payable to the State of Mississippi in such amount and with sufficient surety, both as determined by the commission, to insure the prompt payment of any damages or refunds to the party or persons entitled thereto, if the order shall, at the conclusion of any subsequent proceedings, become effective. Such damages or refunds shall be paid in full, including interest at the same rate prescribed in Section 77-3-39, Section 77-3-69 and Section 77-3-71. In lieu of payment, the utility may credit the service account with the amount due under this section if the consumer entitled to the damages or refund is, at that time, a consumer of the utility.

The commission shall either grant or refuse an application for rehearing within twenty (20) days after the date of application therefor. A failure by the commission to act upon such application within that period shall be deemed refusal thereof. If the application is granted, the commission shall conduct and conclude a rehearing within thirty (30) days of the entry of the order for rehearing and shall enter a new order after the rehearing shall have been concluded, which shall become effective ten (10) days after such order is entered, unless otherwise provided by the commission for reasonable cause.

HISTORY:
Codes, 1942, § 7716-25; Laws, 1956, ch. 372, § 25; Laws, 1983, ch. 467, § 24; Laws, 1987, ch. 312, eff from and after July 1, 1987.

Editor's Notes —
Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Final orders of commission after rehearings on proposed rate changes, see § 77-3-39.

Time allowed for filing appeal from denial of application for rehearing, see § 77-3-67.

Time within which direct appeal to supreme court must be filed where authorized, see § 77-3-72.

RESEARCH REFERENCES

Am. Jur.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Forms 2, 32, 44-46 (petitions or applications for rehearing).

§ 77-3-67. Appeals to chancery court.

(1) In addition to other remedies now available at law or in equity, any party aggrieved by any final finding, order or judgment of the commission, except those final findings, orders or judgments specified in Section 77-3-72, shall have the right, regardless of the amount involved, of appeal to the chancery court of the judicial district in which the principal place of business of the utility in the state of Mississippi is located. If the court shall find that the appeal has been to the improper venue then the cause shall not be dismissed for such reason but shall be transferred to such proper venue. If an application for rehearing has been filed, an appeal must be filed within thirty (30) days after the application for rehearing has been refused or deemed refused because of the commission's failure to act thereon within the time specified in Section 77-3-65 or, if the application is granted, within thirty (30) days after the rendition of the decision on rehearing. If an application for rehearing has not been filed, an appeal must be filed within thirty (30) days after the entry of the commission's order. Every appeal shall state briefly the nature of the proceedings before the commission, and shall specify the order complained of. Any person whose rights may be directly affected by said appeal may appear and become a party, or the court may upon proper notice order any person to be joined as a party.

(2) Upon the filing of an appeal the clerk of the chancery court shall serve notice thereof upon the commission, whereupon the commission shall, within sixty (60) days (or within such additional time as the court may for cause allow) from the service of such notice, certify to the chancery court the record in the case, which record shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case. However, the parties and the commission may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal.

(3) No new or additional evidence shall be introduced in the chancery court but the case shall be determined upon the record and evidence transferred.

(4) The court may hear and dispose of the appeal in termtime or vacation and the court may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part, as the case may be. In case the order is wholly or partly vacated the court may also, in its discretion, remand the matter to the commission for such further proceedings, not inconsistent with

the court's order as, in the opinion of the court, justice may require. The order shall not be vacated or set aside either in whole or in part, except for errors of law, unless the court finds that the order of the commission is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the commission, or violates constitutional rights.

HISTORY:

Codes, 1942, § 7716-26; Laws, 1956, ch. 372, § 26; Laws, 1978, ch. 507, § 2; Laws, 1983, ch. 467, § 25, eff from and after January 3, 1984. [See Editor's Note, below].

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Laws of 1983, ch. 467, § 37, provided that the amendment of § 77-3-67 was to become effective from and after adoption by the people of Mississippi of the amendment to Section 146, Mississippi Constitution of 1890, as proposed by Senate Concurrent Resolution No. 514 [Chapter 682] Laws of 1983. The electorate approved the amendment of § 146 of the Constitution, and, by proclamation of the Secretary of was inserted in the Constitution on January 3, 1984.

Cross References —

Appealed commission matters to take preference in all courts, see § 77-3-73.

Burden of proof on party seeking to vacate commission order, see § 77-3-77.

Application of appeal provisions of this section to determination of commissioner relative to inclusion of cost of purchasing electricity from non-utility generator for period in excess of 30 days as expense item for purpose of calculating rates, see § 77-3-95.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Appeal timely.
3. Standing.

1. In general.

Supreme court had jurisdiction over the orders of the Mississippi Public Service Commission denying a resident's motion to amend his complaint challenging the grant of a Supplemental Certificate of Public Convenience and Necessity (CCN) to a water, sewer and fire district and dismissing the complaint but not over the grant of the supplemental CCN because the resident attempted to appeal the supplemental CCN decision by way of appealing the Commission's orders, and the appeal was untimely since it was filed more than four years after the order granting the supplemental CCN; the Commission filed a timely notice in a newspaper that a decentralized system would be implemented, and the resident was notified of the planned implementation when the district adopted an ordinance, published notice concerning the adoption of the ordinance, and then passed the ordinance after a public hearing at which no one expressed opposition. Green v. Cleary Water, Sewer & Fire Dist., 17 So. 3d 559, 2009 Miss. LEXIS 430 (Miss. 2009), cert. denied, 559 U.S. 971, 130 S. Ct. 1691, 176 L. Ed. 2d 181, 2010 U.S. LEXIS 2154 (U.S. 2010).

Utility customers who never sought intervention in a rate increase proceeding never became parties and, therefore, did not have standing to appeal from the final order of the Public Service Commission. North Miss. Util. Co. v. Wentworth, 604 So. 2d 218 (Miss. 1992).

So long as Public Service Commission examines and considers evidence and testimony of each expert witness who appears in rate change proceeding and does not ignore salient and substantial factors offered into evidence, Commission has prerogative on disputed issue to adopt whichever expert's view it chooses to give credence to; in such case, court cannot disturb Commission's ruling. State ex rel. Pittman v. Mississippi Public Service Com., 481 So. 2d 302, 1985 Miss. LEXIS 2418 (Miss. 1985).

Landowners in condemnation proceedings were not barred from securing a dismissal of the condemnation proceedings, even though they failed to comply with 30 day requirement of § 77-3-67, since the owners had no knowledge or notice about condemnation order. Mississippi Power & Light Co. v. Conerly, 460 So. 2d 107, 1984 Miss. LEXIS 2080 (Miss. 1984).

On appeal by a public telephone company from an order of the Public Service Commission denying its proposed rate increase and allowing only a 10% overall increase, the chancellor properly exercised his discretion in finding, pursuant to § 77-3-67(4), that the denial of the higher increase sought by the telephone company was not supported by substantial evidence and was against the manifest weight of undisputed evidence, where the commission failed to fix a rate base as required by § 77-3-43, failed to fix a rate of return related to a legally formulated rate base as required by §§ 77-3-33(1) and 77-3-39, and arbitrarily fixed a 10% increase in rates when it appeared certain that compliance with that increase would result in a substantial loss; however, the chancellor erred in fixing a rate base and a rate of return, even though he arrived at amounts warranted by the proof, as § 77-3-67(4) provides instead for a remand of the cause to the commission. Mississippi Public Service Com. v. Hughes Tel. Co., 376 So. 2d 1074, 1979 Miss. LEXIS 2512 (Miss. 1979).

The chancellor, in reversing the Public Service Commission's order in an electric utility rate case on the grounds that it was contrary to the overwhelming weight of the evidence, was unsupported by substantial evidence, and was confiscatory in its effect on the public utility company, did not undertake to substitute himself in place of the Commission, but rather properly confined himself to the duties and authority specifically reserved to him by statute. Mississippi Public Service Com. v. Mississippi Power Co., 366 So. 2d 656, 1979 Miss. LEXIS 2204 (Miss. 1979).

Since the rate making authority is legislative in character, it rests within the power of the commission; the authority of the court to enjoin or restrain imposition of confiscatory rates does not carry with it the power to establish the rate. Mississippi Public Service Com. v. Mississippi Power Co., 337 So. 2d 936, 1976 Miss. LEXIS 1602 (Miss. 1976).

Where record of commission proceeding revealed that the commission's order denying a rate change was not supported by any substantial evidence and amounted to the imposition of a confiscatory rate, chancery court order remanding matter to commission was reversed and judgment was entered approving increase. Mississippi Public Service Com. v. Mississippi Valley Gas Co., 327 So. 2d 296, 1976 Miss. LEXIS 1782 (Miss.), limited, Mississippi Public Service Com. v. Mississippi Power Co., 337 So. 2d 936, 1976 Miss. LEXIS 1602 (Miss. 1976).

It was not necessary to remand case to Public Service Commission where Supreme Court determined that order of the Commission denying rate increase requested by Mississippi power company was not supported by substantial evidence and amounted to imposition of confiscatory rates which might be restrained by Supreme Court. Mississippi Power Co. v. Mississippi Public Service Com., 291 So. 2d 541, 1974 Miss. LEXIS 1727 (Miss. 1974), limited, 337 So. 2d 936, 1976 Miss. LEXIS 1602 (Miss. 1976).

The basis of judicial review of the actions of the public service commission is the substantial evidence rule. Capital Electric Power Asso. v. Mississippi Power & Light Co., 216 So. 2d 428, 1968 Miss. LEXIS 1229 (Miss. 1968).

No appeal lies to the chancery court from interlocutory orders of the public service commission. Mississippi Power Co. v. Mississippi Public Service Com., 240 Miss. 621, 128 So. 2d 351, 1961 Miss. LEXIS 492 (Miss. 1961).

Since the function of rate making is purely legislative in character, a court is without power to fix the rates to be charged by public utilities, but may restrain the imposition of confiscatory rates, or, under the Public Utility Act, determine whether rates as fixed are supported by substantial evidence, or within the other statutory restrictions set forth in this section. Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

This section supersedes Code 1942, § 7699, providing for appeals to the circuit court of Hinds County within six months. Mississippi Valley Gas Co. v. Jackson, 236 Miss. 81, 109 So. 2d 637, 1959 Miss. LEXIS 297 (Miss. 1959).

Appeal, and not certiorari, is the proper way to obtain review of a commission order granting a certificate of convenience and necessity to a gas company. Mississippi Valley Gas Co. v. Jackson, 236 Miss. 81, 109 So. 2d 637, 1959 Miss. LEXIS 297 (Miss. 1959).

2. Appeal timely.

Chancery court erred in finding that it was without jurisdiction to hear the resident's appeal of the denial of his motion to amend his complaint challenging the Mississippi Public Service Commission's grant of a Supplemental Certificate of Public Convenience and Necessity to a water, sewer, and fire district because the resident appealed within the thirty-day statutory deadline of the final order dismissing his complaint, Miss. Code Ann. § 77-3-67(1); the resident was not required to appeal the denial of his motion to amend within thirty days of the order because the thirty-day appeal deadline applied only to the final order. Green v. Cleary Water, Sewer & Fire Dist., 17 So. 3d 559, 2009 Miss. LEXIS 430 (Miss. 2009), cert. denied, 559 U.S. 971, 130 S. Ct. 1691, 176 L. Ed. 2d 181, 2010 U.S. LEXIS 2154 (U.S. 2010).

3. Standing.

Because a resident was not a party to the Mississippi Public Service Commission's decision to grant a water, sewer, and fire district a supplemental Supplemental Certificate of Public Convenience and Necessity, he could not appeal from that decision. Green v. Cleary Water, Sewer & Fire Dist., 17 So. 3d 559, 2009 Miss. LEXIS 430 (Miss. 2009), cert. denied, 559 U.S. 971, 130 S. Ct. 1691, 176 L. Ed. 2d 181, 2010 U.S. LEXIS 2154 (U.S. 2010).

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Utilities §§ 183 et seq.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Forms 61 et seq. (judicial review).

§ 77-3-69. Stay of orders pending appeal.

(1) The pendency of proceedings to review shall not of itself stay or suspend the operation of the order of the commission. However, any party may, as a matter of right, secure from the court in which a review of or an appeal from the order of the commission not related to changing rates or rate design is sought, an order suspending or staying the operation of the order of the commission pending a review of such order, by adequately securing the other parties against loss due to the delay in the enforcement of the order in case the order under review is affirmed, the security to be in such form and amount as shall be directed by the court granting the stay or suspension.

(2) If an appeal to the chancery court be taken from an order of the commission reducing existing rates or refusing to approve rates proposed by a utility, the utility, if it is not then collecting under refunding bond rates in excess of rates which have been ordered by the commission, may request upon motion filed in the chancery court an order allowing the utility to place into effect forthwith interim rates which may be charged and collected, subject to refund as hereinafter provided, pending final determination of the rate proceeding. The court may, in its discretion, upon a finding that undue hardship or irreparable injury to the utility or the public interest would probably result otherwise, allow the utility to place into effect such interim rates at a revenue level up to, but not exceeding, the proposed rates. The court may allow the utility to collect all or part of a proposed rate increase. However, before such increased rates can take effect, the utility shall file with the court a bond in a reasonable amount approved by the court, with sureties approved by the court, conditioned upon the refund, with interest at the same rate prescribed in Section 77-3-39, Section 77-3-69 and Section 77-3-71, to the parties entitled thereto, of the amount of the excess if the existing rate or rates or the rate or rates so put into effect are finally determined to be excessive. In lieu of payment, the utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility. If the court does not dispose of the motion for interim rates as contemplated herein within thirty (30) days of the filing of such motion, then the public utility, as a matter of right, may place into effect forthwith fifty percent (50%) of that portion of the proposed rate schedule not allowed by the commission's order, pending final determination of the appeal, upon filing with the court a surety bond in the same manner as previously provided for herein.

(3) If the court does not make a final determination and adjudication of the rate proceeding within one hundred eighty (180) days after the record has been certified and filed, or if the court remands the matter to the commission for further proceedings and the commission has not entered its order allowing rates within forty-five (45) days from the time of receipt of the mandate of the court, or if the commission has at any time entered its order after remand and an appeal therefrom has been taken, then, in any such case, the public utility may, as a matter of right, place into effect the entire proposed rate schedule, under refunding bond, as provided for in this section or in Section 77-3-39, whichever is applicable. Interim rates under refunding bond charged by the utility under this subsection shall terminate upon final disposition of the rate proceeding without timely appeal.

HISTORY:

Codes, 1942, § 7716-27; Laws, 1956, ch. 372, § 27; Laws, 1983, ch. 467, § 26, eff from and after passage (approved April 6, 1983).

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Computation of interest to be paid by public utilities on refunds of excess rates, see § 75-17-35.

Interest on refunds of fuel adjustment costs or charges found to be unjust or unreasonable, see § 77-3-42.

Interest on damages or refunds ordered as result of rehearing, see § 77-3-65.

Security and bond required on appeal to supreme court, see § 77-3-71.

Interest on refunds of moneys collected pending direct appeal to supreme court at interim rates subsequently determined by court to be excessive, see § 77-3-72.

Appealed commission matters to take preference in all courts, see § 77-3-73.

Application of appeal provisions of this section to determination of commissioner relative to inclusion of cost of purchasing electricity from non-utility generator for period in excess of 30 days as expense item for purpose of calculating rates, see § 77-3-95.

JUDICIAL DECISIONS

1. In general.

Finding of Public Service Commission that telephone company seeking rate increase has not met required burden of proof may not be reversed on appeal to chancery court where finding is based on sharply conflicting testimony offered for and against increase. Mississippi Public Service Com. v. South Cent. Bell Tel. Co., 464 So. 2d 1133, 1984 Miss. LEXIS 2038 (Miss. 1984).

A refunding bond by a utility seeking to put into effect an increase in rates pending a determination of their validity, should continue in effect pending a final determination. Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

§ 77-3-71. Appeals to supreme court.

Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

(a) If the party taking the appeal has theretofore furnished security as provided in Sections 77-3-39 and 77-3-69, and has filed a bond conditioned as provided in Sections 77-3-39 and 77-3-69, the taking of an appeal to the supreme court shall operate as a supersedeas without the furnishing of further security or bond. In such cases the supreme court may, upon application to it, require such additional security, or such additional bond conditioned as provided in Sections 77-3-39 and 77-3-69, as in its opinion will adequately secure the other party to the appeal, or parties who may become entitled to refunds, against loss in the event the judgment under review is affirmed.

(b) If an appeal to the supreme court be taken from a final judgment of the chancery court which alters an order of the commission by approving a level of revenue in excess of that allowed by the commission's order, the public utility may, as a matter of right, place such level of revenue which has been so approved by the chancery court in such final judgment into effect, pending final determination of the appeal to the supreme court, upon filing with the supreme court a bond in a reasonable amount approved by such court, with sureties approved by such court, conditioned upon the refund with interest at the lawful rate to the parties entitled thereto, of the amount of the excess if the rates so put into effect are finally determined to be excessive. In lieu of payment, the utility may credit the service account with the amount due under this section if the consumer entitled to the refund, is at that time, a consumer of the utility.

(c) In addition to the foregoing, if an appeal to the supreme court be taken from a final judgment of the chancery court with respect to a proceeding for determination of rates, and the public utility is not then collecting under refunding bond rates in excess of rates which have been ordered by the commission, such utility may request upon motion filed in the supreme court an order allowing the utility to place into effect forthwith interim rates which may be charged and collected, subject to refund as hereinafter provided, pending final determination of the rate proceeding. The court may, in its discretion, upon a hearing by not fewer than three (3) justices and upon a finding that undue hardship or irreparable injury to the utility or the public interest would probably result otherwise, allow the utility to place into effect such interim rates at a revenue level up to, but not exceeding, the proposed rates. The court may allow the utility to collect all or part of a proposed rate increase. However, before such increased rates can take effect, the utility shall file with the court a bond in a reasonable amount approved by the court, with sureties approved by the court, conditioned upon the refund, with interest at the lawful rate, to the parties entitled thereto, of the amount of the excess after the existing rate or rates or the rate or rates so put into effect are finally determined to be excessive. In lieu of payment, the utility may credit the service account with the amount due under this section if the consumer entitled to the refund is, at that time, a consumer of the utility.

If the court does not dispose of the motion for interim rates as contemplated herein within thirty (30) days of the filing of such motion, then the public utility, as a matter of right, may place into effect forthwith fifty percent (50%) of that portion of the proposed rate schedule not allowed by the commission's order, pending final determination of the appeal, upon filing with the court a surety bond in the same manner as previously provided for herein. If the court does not make a final determination and adjudication of the rate proceeding within one hundred eighty (180) days after the record has been certified and filed, or if the court remands the matter to the commission for further proceedings and the commission has not entered its order allowing rates within forty-five (45) days from the time of receipt of the mandate of the court, or if the commission has at any time entered its order after remand and an appeal therefrom has been taken, then, in any such case, the public utility may, as a matter of right, place into effect the entire proposed rate schedule, under refunding bond, as provided for in this section or in Section 77-3-39, whichever is applicable. Interim rates under refunding bond charged by the utility under this subsection shall terminate upon final disposition of the rate proceeding without timely appeal.

HISTORY:

Codes, 1942, § 7716-28; Laws, 1956, ch. 372, § 28; Laws, 1983, ch. 467, § 27, eff from and after passage (approved April 6, 1983).

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Appeals to supreme court from final decrees of chancery court generally, see § 11-51-3.

Computation of interest to be paid by public utilities on refunds of excess rates, see § 75-17-35.

Interest on refunds of fuel adjustment costs or charges found to be unjust or unreasonable, see § 77-3-42.

Interest on damages or refunds ordered as result of rehearing, see § 77-3-65.

Interest on refunds of moneys collected under bond pending appeal to chancery court at interim rates subsequently determined to be excessive, see § 77-3-69.

Interest on refunds of moneys collected pending direct appeal to supreme court at interim rates subsequently determined by court to be excessive, see § 77-3-72.

Appealed commission matters to take preference in all courts, see § 77-3-73.

Application of appeal provisions of this section to determination of commissioner relative to inclusion of cost of purchasing electricity from non-utility generator for period in excess of 30 days as expense item for purpose of calculating rates, see § 77-3-95.

JUDICIAL DECISIONS

1. In general.

So long as Public Service Commission examines and considers evidence and testimony of each expert witness who appears in rate change proceeding and does not ignore salient and substantial factors offered into evidence, Commission has prerogative on disputed issue to adopt whichever expert's view it chooses to give credence to; in such case, court cannot disturb Commission's ruling. State ex rel. Pittman v. Mississippi Public Service Com., 481 So. 2d 302, 1985 Miss. LEXIS 2418 (Miss. 1985).

A refunding bond by a utility seeking to put into effect an increase in rates pending a determination of their validity, should continue in effect pending a final determination. Mississippi Public Service Com. v. Home Tel. Co., 236 Miss. 444, 110 So. 2d 618, 1959 Miss. LEXIS 339 (Miss. 1959).

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities §§ 183 et seq.

§ 77-3-72. Direct appeals to supreme court from decisions of public service commission involving filings for rate changes.

(1) Any party aggrieved by any final finding, order or judgment of the commission in any utility rate proceedings involving a filing for a rate change of any public utility as described in Section 77-3-3(d)(i), (d)(ii), or (d)(iii), shall have the right, regardless of the amount involved, of direct appeal to the Mississippi Supreme Court. If an application for rehearing has been filed, an appeal must be filed within thirty (30) days after the application for rehearing has been refused or deemed refused because of the commission's failure to act thereon within the time specified in Section 77-3-65 or, if the application is granted, within thirty (30) days after the rendition of the decision on rehearing. If an application for rehearing has not been filed, an appeal must be filed within thirty (30) days after the entry of the commission's order. Every appeal shall state briefly the nature of the proceedings before the commission, and shall specify the order complained of. Any person whose rights may be directly affected by said appeal may appear and become a party or the court may, upon proper notice, order any person to be joined as a party.

(2) Upon the filing of an appeal the clerk of the supreme court shall serve notice thereof upon the commission, whereupon the commission shall, within sixty (60) days (or within such additional time as the court may for cause allow) from the service of such notice, certify to the court the record in the case, which record shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case. However, the parties and the commission may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal.

(3)(a) Any utility aggrieved by an order of the public service commission with respect to a proceeding before the commission for determination of rates, and which has filed in the supreme court an appeal therefrom pursuant to this chapter, and which is not then collecting under refunding bond rates in excess of rates which have been ordered by the commission, may request upon motion filed in the supreme court an order allowing the utility to place into effect forthwith interim rates which may be charged and collected, subject to refund as hereinafter provided, pending final determination of the rate proceeding. The court may in its discretion, upon a hearing by not fewer than three (3) justices and upon a finding that undue hardship or irreparable injury to the utility or the public interest would probably result otherwise, allow the utility to place into effect such interim rates at a revenue level up to, but not exceeding, the proposed rates. The court may allow the utility to collect all or part of a proposed rate increase. However, before such increased rates can take effect, the utility shall file with the court a bond in a reasonable amount approved by the court, with sureties approved by the court, conditioned upon the refund, with interest at the same rate prescribed in Section 77-3-39, Section 77-3-69 and Section 77-3-71, to the parties entitled thereto, of the amount of the excess if the existing rate or rates or the rate or rates so put into effect are finally determined to be excessive. In lieu of payment, the utility may credit the service account with the amount due under this subsection if the consumer entitled to the refund is, at that time, a consumer of the utility.

(b) If the court does not dispose of the motion for interim rates as contemplated in paragraph (a) of this subsection within thirty (30) days of the filing of such motion, then the public utility, as a matter of right, may place into effect forthwith fifty percent (50%) of that portion of the proposed rate schedule not allowed by the commission's order, pending final determination of the appeal, upon filing with the court a surety bond in the same manner as provided for in paragraph (a) of this subsection.

(4) If the court does not make a final determination and adjudication of the rate proceeding within one hundred eighty (180) days after the record has been certified and filed, or if the court remands the matter to the commission for further proceedings and the commission has not entered its order allowing rates within forty-five (45) days from the time of receipt of the mandate of the court, or if the commission has at any time entered its order after remand and an appeal therefrom has been taken, then, in any such case, the public utility may, as a matter of right, place into effect the entire proposed rate schedule, under refunding bond, as provided for in this section or in Section 77-3-39, whichever is applicable. Interim rates under refunding bond charged by the utility under this subsection shall terminate upon final disposition of the rate proceeding without timely appeal. The court may hear and dispose of the appeal in termtime or vacation and the court may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part, as the case may be. In case the order is wholly or partly vacated the court may also, in its discretion, remand the matter to the commission for such further proceedings, not inconsistent with the court's order as, in the opinion of the court, justice may require. The order shall not be vacated or set aside either in whole or in part, except for errors of law, unless the court finds that the order of the commission is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the commission, or violates constitutional rights.

HISTORY:

Laws, 1983, ch. 467, § 28, eff from and after January 3, 1984. [See Editor's Note, below].

Editor's Notes —

Laws of 1983, ch. 467, § 37, provided that the insertion of § 77-3-72 was to become effective from and after adoption by the people of Mississippi of the amendment to Section 146, Mississippi Constitution of 1890, as proposed by Senate Concurrent Resolution No. 514 [Chapter 62], Laws of 1983. The electorate approved the amendment of § 146 of the Constitution, and, by proclamation of the Secretary of State, State, was inserted in the Constitution on January 3, 1984.

Cross References —

Appeals to chancery court from findings, orders and judgments of public service commission not subject to this section, see § 77-3-67.

Appealed commission matters to take preference in all courts, see § 77-3-73.

Burden of proof on party seeking to vacate commission order, see § 77-3-77.

JUDICIAL DECISIONS

1. In general.

Public Service Commission improperly sealed information to which the public was entitled because it erred in determining that rate-impact information was confidential and concealed from the ratepayers the amount of the projected increases; the Commission's decision to govern in a cloak of secrecy and grant confidentiality to rate-impact information was arbitrary and capricious. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

Public Service Commission erred in granting rate increases for a power company because it failed to comply with the Base Load Act and exceeded its authority granted by the Act; by stipulation, the Commission improperly deferred prudency hearings, which were a prerequisite to granting an increase in rates, and in the absence of prudency hearings, a rate could not be arbitrarily declared as fair, just, and reasonable. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

Public Service Commission's (PSC) denial of any rate increase to water utility was unsupported by substantial evidence and was contrary to manifest weight of the evidence in utility rate case, warranting reversal and remand to Commission for determination of amount of rate increase, despite Commission's finding that utility was not providing adequate service; denial of rate increase was apparently punitive, utility had been receiving the same base monthly rate from customers for five years, experts testified that, despite competent economic management, existing base rate resulted in ongoing losses to utility, even intervenors conceded that utility was entitled to some increase, and services that utility provided were worth more than present base rate. White Cypress Lakes Water v. Mississippi PSC, 703 So. 2d 246, 1997 Miss. LEXIS 462 (Miss. 1997).

The Public Service Commission (PSC) is an arm of the legislature. While the utility has the burden of proving by substantial evidence that it clearly is entitled to a requested rate increase, the order of the PSC presumptively is considered valid. Due to its expertise, the PSC is the trier of fact and within this province it has the right to determine the weight of the evidence, the reliability of estimates and the credibility of the witnesses, and it is free to accept or reject the recommendations of any of the witnesses. State ex rel. Pittman v. Mississippi Public Service Com., 538 So. 2d 387, 1989 Miss. LEXIS 10 (Miss. 1989).

§ 77-3-73. Appealed commission matters to take preference in all courts.

All commission matters appealed to any court shall take preference over other cases as a matter affecting the public interest, and all courts shall docket and dispose of such causes at the earliest moment compatible with the ends of justice.

HISTORY:

Codes, 1942, § 7716-29; Laws, 1956, ch. 372, § 29.

Cross References —

Application of appeal provisions of this section to determination of commissioner relative to inclusion of cost of purchasing electricity from non-utility generator for period in excess of 30 days as expense item for purpose of calculating rates, see § 77-3-95.

§ 77-3-75. Enforcement of commission orders.

The commission may apply to the chancery court, First Judicial District of Hinds County, Mississippi, for enforcement, by mandamus, injunction or other appropriate remedy, of any order of the commission.

HISTORY:
Codes, 1942, § 7716-30; Laws, 1956, ch. 372, § 30.

JUDICIAL DECISIONS

1. In general.

Although two certificated rural waterworks corporations had an adequate remedy under this section to protect their franchises against encroachment by an adjacent municipality, the federal court will not deny jurisdiction where a substantial federal question exists. Southeast Winston Rural Water Asso. v. Louisville, 303 F. Supp. 974, 1969 U.S. Dist. LEXIS 10375 (N.D. Miss. 1969).

The public service commissioner's method of enforcing a cease and desist order is by applying for an injunction. Brotherhood of R. Trainmen v. Illinois C. R. Co., 243 Miss. 851, 138 So. 2d 908, 1962 Miss. LEXIS 412 (Miss. 1962).

§ 77-3-77. Burden of proof on party seeking to vacate commission order.

In all actions and proceedings arising under the provisions of this article or growing out of the exercise of the authority and powers herein granted to the commission, the burden of proof shall be on the party seeking to vacate an order of said commission.

HISTORY:
Codes, 1942, § 7716-31; Laws, 1956, ch. 372, § 31.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities §§ 180, 192.

CJS.
73B C.J.S., Public Utilities § 267.

§ 77-3-79. Reports by utilities; inspection of records; filing deadlines; penalties.

The commission may require, by order served on any public utility in the manner provided in this chapter for the service of orders, the filing of such relevant reports, information or data at such time and place as it may reasonably designate.

The commission shall at all reasonable times have access to and the right to inspect and examine all accounts, records, memoranda and property of the public utilities, and it shall be the duty of such public utilities to furnish to the commission, within such reasonable time as the commission may order, any information with respect thereto which the commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records and papers, and to grant to all agents of the commission free access to its property and accounts, records and memoranda when requested so to do. It shall be unlawful for any member, officer, agent or employee of the commission knowingly and willingly to divulge any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this chapter, except as he may be directed by the commission or by a court or a judge thereof.

The commission shall require an annual reporting from each public utility, the rates of which are subject to regulation under the provisions of this chapter, of all its expenditures for business gifts and entertainment, and institutional, consumption-inducing and other advertising or public relations expenses which the utility claims should be allowed for rate-making purposes. The commission shall not allow as costs or expenses for rate-making purposes any of these expenditures which the commission determines not to be in the public interest. The cost of legislative-advocacy expenses shall not in any case be allowed as costs or expenses for rate-making purposes. Reasonable charitable or civic contributions shall be allowed as cost of service not to exceed amounts established by regulations adopted by the commission.

The commission shall establish filing deadlines for any required periodical reports but in no event shall the filing of such reports exceed sixty (60) days from the due date established by the commission. The commission shall have the authority to extend by order the time of compliance upon a finding that a matter of great urgency exists which would make compliance inequitable. The order extending the time for compliance shall fully set forth the facts justifying such extension. Any public utility which does not furnish such reports, information or other data by the deadlines established by the commission or within the extended time authorized by the commission shall be fined not more than One Thousand Dollars ($1,000.00) per day for each day in violation of the requirements herein that such reports, information or other data are not furnished to the commission.

HISTORY:

Codes, 1942, § 7716-20; Laws, 1956, ch. 372, § 20; Laws, 1983, ch. 467, § 29; Laws, 1990, ch. 513, § 1, eff from and after passage (approved April 2, 1990).

Editor's Notes —

Laws of 1983, ch. 467, § 36, effective from and after April 6, 1983, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Cross References —

Enforcement of commission orders, see § 77-3-75.

Violations of orders, penalties, see § 77-3-81.

Penalties for violations are cumulative, see § 77-3-83.

JUDICIAL DECISIONS

1. In general.

A performance evaluation plan that relegated to cost-of-service 50 percent of all charitable contributions made by the Mississippi Power Company was an arbitrary allegation of charitable contributions and, therefore, was not "reasonable" as required by § 77-3-79. State ex rel. Pittman v. Mississippi Public Service Com., 538 So. 2d 367, 1989 Miss. LEXIS 12 (Miss. 1989).

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities § 150.

Practice References.
Accounting for Public Utilities (Matthew Bender).

§ 77-3-81. Violations of article or orders of commission; furnishing to commission of false testimony, reports, records, etc.

(1)(a) Any person or corporation which willfully and knowingly violates any provision of this article or which fails, omits or neglects to obey, observe or comply with any lawful order, or any part or provision thereof, of the commission shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), which shall be deposited in the State General Fund.

(b) Every violation of the provisions of this article or of any lawful order of the commission, or any part or portion thereof by any corporation or person is a separate and distinct offense, and in case of a continuing violation after a first conviction, each day's continuance thereof shall be deemed to be a separate and distinct offense.

(2) Any person who knowingly or intentionally gives false testimony at any hearing held by the commission, a commissioner or a hearing examiner, or who knowingly or intentionally makes false reports to the commission, when the testimony and reports are required by this article or any lawful order or rule of the commission, or who knowingly or intentionally makes any false entries upon the books or records of any public utility subject to review by the commission, or who knowingly or intentionally makes or preserves any false or misleading vouchers, memoranda or records showing the nature of, or purpose for, the disbursement of funds of such public utilities, shall be deemed guilty of a felony and, upon conviction, shall be committed to the custody of the State Department of Corrections for a period of not less than one (1) year nor more than ten (10) years for every offense.

HISTORY:
Codes, 1942, §§ 7716-32, 7716-33; Laws, 1956, ch. 372, §§ 32, 33; Laws, 1991, ch. 562, § 2, eff from and after passage (approved April 2, 1991).

Cross References —
Proceedings for enforcement of statutes administered by commission or regulations or orders of commission generally, see § 77-1-53.

Enforcement of orders, see § 77-3-75.

Penalties for violations of commission orders are cumulative, see § 77-3-83.

Jurisdiction and limitation period for actions under this section, see § 77-3-85.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

§ 77-3-83. Penalties are cumulative.

All penalties accruing under this article shall be cumulative, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility or any officer, director, agent or employee thereof or any other corporation or person.

HISTORY:
Codes, 1942, § 7716-34; Laws, 1956, ch. 372, § 34.

§ 77-3-85. Jurisdiction of actions to recover penalties and criminal prosecutions; limitation of actions.

Actions to recover penalties under this article, and criminal prosecutions under subsection (2) of Section 77-3-81, shall be brought in the name of the State of Mississippi in any court of competent jurisdiction. No action for penalty under subsection (1) of Section 77-3-81 may be maintained after the expiration of one (1) year from the date of the act of which complaint is made.

HISTORY:
Codes, 1942, § 7716-35; Laws, 1956, ch. 372, § 35; Laws, 1991, ch. 562, § 3, eff from and after passage (approved April 12, 1991).

Cross References —
Proceedings for enforcement of statutes administered by commission or regulations or orders of commission generally, see § 77-1-53.

§ 77-3-87. Utilities taxed for expense of regulation by commission; collection of tax; adjustment of tax rate; funding of agency expenses; deposit of monies into State General Fund.

All reasonable and necessary expenses of the administration of the duties imposed on the public utilities staff and on the commission by Title 77, Mississippi Code of 1972, excluding the reasonable and necessary expenses of the administration and enforcement by the commission of the laws of this state pursuant to Chapters 7 and 9, Title 77, Mississippi Code of 1972, shall be provided as follows: There is hereby levied a tax upon (a) all utilities, the rates of which are subject to regulation by the provisions of this chapter and upon (b) all utilities not subject to such rate regulation which furnish to the ultimate consumer utility services of the type described by subparagraph (i) of paragraph (d) of Section 77-3-3 and otherwise subject to regulation by the provisions of this chapter, such levy to be effective on the first day of each year and to be calculated as follows: The rate of the tax shall be one hundred sixty-four thousandths of one percent (${}^{1}64/10_{00}$ of 1%) per year, of the gross revenues from the intrastate operations of the utilities taxed under this section. The rate of the tax for electric power associations and rural electrification authorities shall be ninety thousandths of one percent ($90/10_{00}$ of 1%) per year of the gross revenues from the intrastate operations of electric power associations and rural electrification authorities taxed under this section. Effective July 1, 2017, the sum of all taxes levied by this section shall not exceed the total legislative appropriation of monies for the Public Utilities staff and the Public Service Commission for the ensuing fiscal year. The commission and the executive director of the public utilities staff shall certify to the Department of Revenue the amount of legislative appropriations of monies for the regulation of utilities. The Department of Revenue shall adjust the tax rates on a pro rata basis to generate the necessary revenues established by such legislative appropriations. Each utility which is subject to the tax levied by this section shall file a statement of its gross revenue by April 1 of each year showing the gross revenue for the preceding year's operation. These statements of gross revenue shall be filed with the Department of Revenue on forms prescribed and furnished by the Department of Revenue. The Department of Revenue shall file a copy of these statements of gross revenue with the public utilities staff and the commission. The Department of Revenue shall calculate the amount of tax to be paid by each of the utilities and shall submit a statement thereof to the respective utilities, and the amount shown due in the statements to the utilities shall be paid by them within thirty (30) days thereafter to the Department of Revenue. The Department of Revenue shall furnish the public utilities staff and the commission with an itemized list showing gross and net revenues, assessments, tax collections and other related information for the respective utilities. The Department of Revenue shall deposit these funds into the General Fund if the State Treasury on the same day collected.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other duties and requirements imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the Commissioner of Revenue shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the Mississippi Sales Tax Law except where there is a conflict, then the provisions of this chapter shall control. The term "gross revenue " as used in this section is the total amount of all revenue derived by each of the utilities from its intrastate operations, which are subject to rate regulation under the provisions of this chapter or which constitute utility services of the type described by subparagraph (i) of paragraph (d) of Section 77-3-3 and which are regulated by this chapter and furnished to ultimate consumers. The Department of Revenue is hereby authorized to use all tax returns of any utilities available to it and to make audits as may be deemed necessary of all records of utilities in order to correctly determine the amount of such gross revenue.

All proceeds of the above-mentioned tax are hereby allocated to the public utilities staff and to the commission in the manner provided in this section for the purpose of this chapter.

Each utility subject to the provisions of this section shall be allowed to recover, through the use of a rate adjustment clause or rider, the total amount of taxes paid by the utility pursuant to this section for the reasonable and necessary expenses of the commission and the public utilities staff.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Codes, 1942, § 7716-36; Laws, 1956, ch. 372, § 36; Laws, 1966, ch. 626, § 1; Laws, 1968, ch. 505, § 1; Laws, 1970, ch. 427, § 1; Laws, 1973, ch. 443, § 1; Laws, 1974, ch. 369; Laws, 1977, ch. 436; Laws, 1980, ch. 559, § 1; Laws, 1983, ch. 467, § 30; Laws, 1984, ch. 478, § 31; Laws, 1987, ch. 343, § 6; Laws, 1991, ch. 525, § 1; Laws, 1992, ch. 517, § 1; reenacted and amended, Laws, 1993, ch. 537, § 1; Laws, 1998, ch. 458, § 4; Laws, 2000, ch. 613, § 1; Laws, 2016, ch. 459, § 48; Laws, 2017, 1st Ex Sess, ch. 7, § 38, eff from and after passage (approved June 23, 2017).

Editor's Notes —

Laws of 1983, ch. 467, § 36, provides as follows:

"SECTION 36. This act shall not affect any case or proceeding which is pending before the Mississippi Public Service Commission or any court of this state at the time this act becomes effective, and any such case or proceeding shall be concluded in accordance with such law and administrative rules and regulations promulgated pursuant thereto as existed immediately prior to the effective date of this act."

Laws of 1984, ch. 478, § 3, provides that, for purposes of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing.

Laws of 1984, ch. 478, § 35, provides that "The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Laws of 1991, ch. 525, § 8, provides as follows:

"SECTION 8. Nothing in Section 1 of this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 3, Title 77, Mississippi Code of 1972, before the date on which Section 1 of this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which Section 1 of this act becomes effective or are begun thereafter; and the provisions of Chapter 3, Title 77, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which Section 1 of this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1992, ch. 517, § 2, effective from and after passage (approved May 14, 1992), provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 3, Title 77, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 3, Title 77, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2000, ch. 613, § 2, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 3, Title 77, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 3, Title 77, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes —

The 2017 amendment, effective June 23, 2017, in the first paragraph, rewrote the third sentence, which read: "The sum of all taxes levied by this section shall not exceed the total legislative appropriation of monies from the 'Public Utilities Staff Regulation Fund' and the 'Public Service Commission Regulation Fund' for the ensuing fiscal year," and rewrote the last sentence, which read: "The Department of Revenue shall pay these funds into the State Treasury on the same day collected to the credit of the 'Public Utilities Staff Regulation Fund' and to the 'Public Service Commission Regulation Fund' in the proportion that the legislative appropriation of monies from each fund for the regulation of utilities for the ensuing fiscal year bears to the total legislative appropriation of monies from both funds for the regulation of utilities for the ensuing fiscal year."

Cross References —

State tax commission, generally, see §§ 27-3-1 et seq.

Mississippi Sales Tax Law, see § 27-65-1, et seq.

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Public Service Commission Regulation Fund, see § 77-1-6.

Public Utilities Staff Regulation Fund, see § 77-2-19.

RESEARCH REFERENCES

Practice References.

Accounting for Public Utilities (Matthew Bender).

Taxation of Public Utilities (Matthew Bender).

JUDICIAL DECISIONS

1. In general.

A pipe-line company whose sales are in interstate commerce is not chargeable with a pro rata share of the cost of regulating utilities. United Gas Pipe Line Co. v. Mississippi Public Service Com., 241 Miss. 762, 133 So. 2d 521, 1961 Miss. LEXIS 397 (Miss. 1961).

§ 77-3-89. Payment of expenses; audit of books and accounts; Public Utilities Staff Regulation Fund; funding of agency expenses; deposit of monies into State General Fund.

It shall be the duty of the State Auditor to advise the commission of the amount of money on hand in the "Public Service Commission Regulation Fund" from time to time. All expenses of the commission authorized by this article, or any other act of the Legislature, shall be paid by the State Treasurer upon warrants issued by the State Fiscal Officer, which warrants shall be issued upon requisition signed by the chairman of the commission and countersigned by one (1) of the commissioners. Said requisition shall show upon its face the purpose for which the payment is being made by reference to the minute book in which such payment was authorized. It shall be unlawful for any person to withdraw any money from said fund other than by requisition issued as herein provided. A record of all requisitions issued by the commission showing to whom, for what purpose, and date issued, shall be placed upon the minute books of the commission and shall become a part of the official record of the commission.

The books and accounts of the commission shall be audited at the end of each fiscal year, and at any other time deemed necessary, by the State Auditor and a copy of such audits shall be furnished to the Governor and the commission. The State Auditor may prescribe such further accounting procedure as he deems necessary for the withdrawal of funds by the commission from said special fund. All requisitions drawn in compliance with this article shall be honored by the State Auditor and the funds disbursed in accordance therewith. The commission shall file a report at each regular session of the Legislature showing the expenditure of all funds by the commission.

The "Public Utilities Staff Regulation Fund" shall be administered in accordance with Section 77-2-19.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Codes, 1942, § 7716-36; Laws, 1956, ch. 372, § 36; Laws, 1966, ch. 626, § 1; Laws, 1968, ch. 505, § 1; Laws, 1970, ch. 427, § 1; Laws, 1987, ch. 343, § 7; Laws, 1991, ch. 525, § 6; Laws, 2016, ch. 459, § 54, eff from and after July 1, 2016.

Editor's Notes —

Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016' "

Cross References —

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Public Service Commission Regulation Fund, see § 77-1-6.

RESEARCH REFERENCES

Practice References.

Accounting for Public Utilities (Matthew Bender).

§ 77-3-90. Annual reports of commission.

It shall be the duty of the commission to make and publish annual reports to the governor and the legislature as provided in Section 27-101-1, et seq., of commission activities, including copies of its general orders and regulations, comparative statistical data on the operation of the various public utilities in the state, comparison of rates in Mississippi with rates elsewhere, a detailed report of its investigative division, a detailed report of the public utilities staff, a review of significant developments in the fields of utility law, economics and planning, a report of pending matters before the commission and a digest of the principal decisions of the commission and the Mississippi courts affecting public utilities.

HISTORY:
Laws, 1983, ch. 467, § 31, eff from and after passage (approved April 6, 1983).

RESEARCH REFERENCES

Practice References.
Accounting for Public Utilities (Matthew Bender).

§ 77-3-91. Definitions applicable to §§ 77-3-91 through 77-3-95.

The following terms when used in Sections 77-3-91 through 77-3-95 shall have the following meaning:

(a) "Utility" means an entity as defined in Section 77-3-3(d)(i), Mississippi Code of 1972, and whose rates for retail electric service are subject to regulation in this state.

(b) "Commission" means the Mississippi Public Service Commission.

(c) "Return" means before-tax return on common equity capital of the utility.

(d) "Non-utility generator" means an entity selling electric capacity or energy at wholesale and which is not itself a utility as defined in paragraph (a) of this section. Non-utility generator shall not include any entity that is making the sale to the purchasing utility pursuant to a holding company system pooling agreement or a wholesale power sales agreement between or among affiliates where the allocation of power is mandated by the Federal Energy Regulatory Commission.

(e) "Non-associated source" means an entity which is not an affiliate or a subsidiary of the utility.

(f) "Capacity" means that portion of a wholesale purchase which represents the availability of the generating unit to produce the energy to be transmitted to the purchasing utility.

(g) "Energy" means the electricity, as opposed to the availability, received by the purchasing utility pursuant to the sale.

HISTORY:
Laws, 1994, ch. 316, § 1, eff from and after passage (approved March 10, 1994).

§ 77-3-93. Cost of purchasing electricity from non-utility generator for period in excess of 30 days included as expense item for purpose of calculating rates.

(1) Whenever a utility purchases at wholesale from a non-utility generator or some non-associated source all or a portion of its electric capacity and/or energy requirements for a period in excess of thirty (30) days, such utility shall be entitled to include as expense items in its revenue requirements, for the purpose of the calculation of its rates for retail service, the cost of such capacity and energy so purchased, and in addition to such cost, an amount representing a return on the capacity purchased over the period of the test year which is

being used to calculate the revenue requirements. This amount shall be calculated using the return allowed by the commission as provided in Section 77-3-95.

(2) Nothing in Sections 77-3-91 through 77-3-95 shall be interpreted to allow a return on the energy purchased by a utility pursuant to its obligation to purchase energy under the federal Public Utilities Regulatory Policy Act of 1978.

HISTORY:

Laws, 1994, ch. 316, § 2, eff from and after passage (approved March 10, 1994).

Cross References —

Definitions applicable to this section, see § 77-3-91.

Federal Aspects—

Public Utility Regulatory Policy Act of 1978, see 15 USCS §§ 3201 et seq., 16 USCS §§ 824 et seq., and 42 USCS §§ 6801 et seq.

RESEARCH REFERENCES

CJS.

29 C.J.S., Electricity §§ 102, 103.

Practice References.

Accounting for Public Utilities (Matthew Bender).

§ 77-3-95. Utilities to report to public utility staff and public service commission purchases of electricity from non-utility generator for period in excess of 30 days; public comment on report; hearings.

(1) Before a utility may receive the return on the cost of such capacity purchase, the utility shall report the purchase to the Public Utilities Staff and the Public Service Commission. The utility shall also send notice of the purchase to persons who have requested same and are on the list maintained for that purpose by the Secretary of the Public Service Commission. The Public Utilities Staff shall investigate the purchase to determine:

(a) Whether the purchase is in the best interest of the utility and of the retail customers of the utility;

(b) Whether the portion of the purchase designated as capacity or energy requirements, or both, is appropriate; and

(c) Whether the return filed by the utility in the report of purchase is just and reasonable to the utility and to the retail customers of the utility.

(2) Any third person may comment as deemed appropriate on the report, but if any third person desires a hearing, a written petition must be filed along with all supporting documentation, including all proposed testimony and exhibits supporting the contention that a hearing is needed and supporting the issues that should be considered. These issues may include any of the matters set forth in this section. The Public Utilities Staff shall fully review the information contained in the utility's report and the material submitted by the third party and shall report in writing to the commission.

(3) If upon recommendation of the Public Utilities Staff or at the request

of the third party petitioner, or on its own initiative, the commission determines that a hearing should be held, then the commission will set a time for a hearing, determine the issues to be heard and set a schedule for such preliminary matters as it deems necessary for such hearing. If the commission determines that a hearing is not necessary on any or all of the issues set forth in this section, it may determine such issue or issues based upon the record before it and file its final order thereon which shall then be subject to appeal as provided in Sections 77-3-67 through 77-3-73.

HISTORY:

Laws, 1994, ch. 316, § 3, eff from and after passage (approved March 10, 1994).

Cross References —

Definitions applicable to this section, see § 77-3-91.

RESEARCH REFERENCES

CJS.

29 C.J.S., Electricity §§ 102, 103.

§ 77-3-97. Water conservation; submetering in multiunit dwellings.

(1) The Legislature finds that the conservation of water resources is vitally important to the future of our state, and that in order to enhance the conservation of water resources, it is necessary to grant specific authority for the provision of submetering of water and wastewater disposal service.

(2) As used in this section, the following words and phrases have the meanings ascribed in this subsection, unless the context clearly indicates otherwise:

(a) "Apartment house" means one or more buildings containing four (4) or more dwelling units that are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and if a dwelling unit is rented, having rental paid at intervals of one (1) month or longer.

(b) "Dwelling unit" means one or more rooms in an apartment house or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities, or a manufactured home in a manufactured home community.

(c) "Customer" means the individual, firm or corporation in whose name a master meter has been connected by a public utility.

(d) "Owner" means the legal titleholder of an apartment house or manufactured home community and any individual, firm or corporation that purports to be the landlord of tenants in the apartment house or manufactured home community.

(e) "Tenant" means a person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(f) "Manufactured home community" means a property on which spaces are rented for the occupancy of: (i) manufactured homes for nontransient residential use and for which rental is paid at intervals of one (1) month or longer; or (ii) recreational vehicles for nontransient residential use for a time period of three (3) months or longer.

(g) "Submetering" means the use of a metering device by a customer who receives water and wastewater service from a public utility, which metering device measures water supplied to a tenant for the purpose of the customer's charging the tenant of a dwelling unit separately for water and wastewater usage.

(3)(a) An apartment house owner, manufactured home community owner or condominium manager may provide for submetering of each dwelling unit or rental unit for the measurement of the quantity of water consumed by the occupants of the unit. If submetering is utilized, tenants may be charged separately for water and wastewater services on a pass through allocated basis for charges incurred by the customer. The charges for a tenant may not exceed the tenant's pro rata share of all water and wastewater services used by all of the tenants in that apartment house, manufactured home community or condominium.

(b) Any apartment house owner, manufactured home community owner or condominium manager utilizing submetering pursuant to this section shall disclose the submetering to each tenant and obtain from the tenant an acknowledgment of the submetering in a written document.

(c) Submeters installed pursuant to this section must meet the American Water Works Association standards for accuracy.

(d) In rendering charges to tenants pursuant to this section, the customer shall provide:

(i) Beginning and ending meter reads;

(ii) A statement that the bill is not from the public utility; and

(iii) A telephone number for tenant inquiries on the bill.

(e) Water and wastewater services utilized by the tenant may not be disconnected for nonpayment of submetered bills.

HISTORY:

Laws, 2002, ch. 513, § 1, eff from and after July 1, 2002.

Cross References —

Conservation of water and water resources, generally, see §§ 51-3-1 et seq.

ARTICLE 2.

ALTERNATE METHOD OF COST RECOVERY ON CERTAIN BASE LOAD GENERATION.

General Provisions. 77-3-101
Mississippi Public Utility Rate Mitigation and Reduction Act. 77-3-111

GENERAL PROVISIONS

Sec.
77-3-101. Legislative determinations and declarations of policy.
77-3-103. Definitions.

Sec.
77-3-105. Inclusion of certain expenditures in electric public utility rate base and rates; accrual of reasonable rate of return; cancellation or abandonment of construction; prudence reviews; appeal of final order of commission.
77-3-106. Rate mitigation plan; proposal, scope, approval, implementation.
77-3-107. Rules and regulations; preference for ownership of generating facilities by certain electric public utilities.
77-3-109. Legislative Advisory Board on Alternate Method of Cost Recovery on Base Load Generation; purpose; composition.

§ 77-3-101. Legislative determinations and declarations of policy.

The Legislature finds, determines and declares the following to be in the public interest and the policy of the State of Mississippi:

(a) To promote and foster the prudent, timely expansion and construction of, and long-term availability of, adequate and appropriate levels of electric generation by electric public utilities, as described in Section 77-3-3(d) (i), with diversity as to the means of such generation and as to the sources of fuel for such generation, including nuclear fuel, coal and other reliable fuel sources;

(b) That such availability is essential to the orderly and effective operation of a reliable electric system in this state and will be vital to economic stability and growth within the State of Mississippi and to the public interest, and that the generation and related operations of electric public utilities are affected with the public interest;

(c) That new base load electric generating technologies are and will continue to be important in the planning and development of public utility electric generation, and that the State should take advantage of advances in nuclear, coal and other technologies, including technologies that reduce or minimize, or that facilitate the future reduction or minimization of, regulated air emissions;

(d) To take advantage of financial and other incentives afforded and provided by the federal Energy Policy Act of 2005 for the construction of certain electric generating facilities and any federal or state legislative or other incentives that may from time to time become available and to require that all such incentives be utilized for the benefit of such generating facilities;

(e) To promote and foster economic development; and

(f) To promote and foster the State of Mississippi's energy independence by encouraging the development and utilization of fuel sources derived from the State of Mississippi's natural resources.

HISTORY:

Laws, 2008, ch. 531, § 1, eff from and after passage (approved May 9, 2008).

Federal Aspects—

The Energy Policy Act of 2005, Act Aug. 8, 2005, P.L. 109-58, 119 Stat. 594, appears in part as 42 USCS §§ 15801 et seq.

§ 77-3-103. Definitions.

As used in this article:

(a) The term "generating facility" means a new electric public utility base load generating facility located in the State of Mississippi having, or potentially having, base load-serving characteristics and incorporating such generating technologies or fuel sources as may be approved by the commission, including equipment or facilities relating thereto such as related, connected or necessary electric transmission facilities, and:

(i) Having, or planned or projected to have, an aggregate design capability, based upon manufacturer name plate rating or other appropriate rating as the commission may approve, of generating three hundred (300) megawatts or greater of electric power for a coal gasification or clean coal facility and eight hundred (800) megawatts or greater of electric power for a nuclear facility;

(ii) That, in whole or in part, is owned or controlled, or is planned or projected to be owned or controlled, by, or under common control with, an electric public utility certificated to operate as such by the commission with a certificated electric service area located within the State of Mississippi;

(iii) That is intended, in whole or in part, to serve retail customers of an electric public utility in Mississippi;

(iv) That utilizes technology to reduce or minimize, or to facilitate the future implementation of processes for the reduction or minimization of regulated air emissions; and

(v) That may, but shall not be required to, be located at an existing generating facility site.

(b) The term "pre-construction" means any and all activities or costs relating to planning, evaluation, screening, licensing, siting, design, development or other similar activities prior to the construction of a generating facility.

HISTORY:

Laws, 2008, ch. 531, § 2, eff from and after passage (approved May 9, 2008).

§ 77-3-105. Inclusion of certain expenditures in electric public utility rate base and rates; accrual of reasonable rate of return; cancellation or abandonment of construction; prudence reviews; appeal of final order of commission.

(1)(a) The commission is fully empowered and authorized to include in an electric public utility's rate base and rates, as used and useful components of furnishing electric service, all expenditures determined to be prudently-incurred pre-construction, construction, operating and related costs that the utility incurs in connection with a generating facility (including but not limited to all such costs contained in the utility's "Construction Work in Progress" or "CWIP" accounts), whether or not the construction of any generating facility is ever commenced or completed, or the generating facility is placed into commercial operation. However, all costs incurred before May 9, 2008, may be reflected in rates only upon an order of the Public Service Commission after a finding of prudency.

(b) The commission is further empowered and authorized to allow a public utility to accrue a just and reasonable rate of return to be determined by the commission on the unrecovered balance of any pre-construction or construction costs which shall include all costs incurred before May 9, 2008, and such costs may be reflected in rates only upon an order of the Public Service Commission after a finding of prudency.

(c) The commission may order that pre-construction, construction, operating and related costs be reflected in rates either as a part of base rates or through the operation of a rider schedule or other similar rate mechanism, or through a combination thereof, as the commission deems appropriate and in the public interest, and such costs incurred before May 9, 2008, may be reflected in rates only upon an order of the Public Service Commission after a finding of prudency.

(d) Notwithstanding other provisions of this section, recovery of any construction costs incurred in excess of the amount estimated by the public utility in a certificate proceeding will be addressed by the commission in a proceeding after the generating facility is completed and commences commercial operation, upon petition by the public utility.

(e) Once the commission grants a facilities certificate, no public utility shall abandon or cancel construction of a generating facility without approval from the commission based on a finding that the construction is no longer in the public interest. Notwithstanding any provisions of this article to the contrary, if the generating facility is abandoned or cancelled without the approval of the commission, the commission shall determine whether the public interest will be served to allow (i) the recovery of all or part of the prudently incurred pre-construction, construction and related costs in connection with the generating facility and related facilities, (ii) the recovery of a return on the unrecovered balance of the utility's prudently-incurred costs at a just and reasonable rate of return to be determined by the commission, or (iii) the implementation of credits, refunds or rebates to ratepayers to defray costs incurred for the generating facility.

(2)(a) The commission is authorized to conduct prudence reviews on a periodic or ongoing basis with regard to any pre-construction, construction, operating and related costs associated with a generating facility, to hold hearings thereon, and to reflect the outcome of such commission reviews, including commission prudence determinations, in the public utility's rates. The commission is authorized to make and issue such prudence determinations as frequently as each calendar quarter. The commission is authorized to set a procedural schedule for such commission determinations. Any such prudence determinations shall be binding in all future regulatory proceedings affecting such generating facility, unless the generating facility is imprudently abandoned or cancelled.

(b) The Executive Director of the Public Utilities Staff and the commission may enter into professional services contracts with one or more consultants to audit pre-construction, construction and related costs incurred for a generating facility and to make such reports and provide testimony thereon as may be required by the executive director or the commission, as applicable. Such contracts shall be considered to be for auditor or utility rate expert services under Section 25-9-120. Costs associated with such professional service contracts shall not exceed Three Hundred Fifty Thousand Dollars ($350,000.00) for work performed on any given nuclear generating facility and Two Hundred Thousand Dollars ($200,000.00) on any given non-nuclear generating facility, in any twelve-month period; provided, however, the Public Utilities Staff and the commission may by rule, after notice and hearing, modify these amounts. The consultants shall submit periodically to the executive director or the commission, as applicable, for approval of payment, itemized bills detailing the work performed. The executive director or the chairman of the commission, as applicable, shall requisition the audited public utility to make the requisite payments to such consultants. Payments by the audited public utility shall be considered as pre-construction, construction, operating or related costs and recoverable pursuant to paragraph (c) of subsection (1).

(c) The provisions of Sections 77-3-37(7) (b) and 77-3-39(10) and (15) shall not apply to any proceeding for the change in rates by the commission in connection with a generating facility.

(3) Any party aggrieved by any final order of the commission relating to any generating facility shall have a right of direct appeal to the Mississippi Supreme Court. The procedures set out in Section 77-3-72 for direct appeal, including those provisions relating to periods of time in which filings are to be made, shall apply to any commission final order promulgated, in whole or in part, pursuant to this article.

HISTORY:

Laws, 2008, ch. 531, § 3, eff from and after passage (approved May 9, 2008).

Cross References —

Appealed commission matters to take preference in all courts, see § 77-3-73.

Burden of proof on party seeking to vacate commission order, see § 77-3-77.

JUDICIAL DECISIONS

ANALYSIS

1. Prudency hearing.
2. Construction work in progress.
3. Due process.

1. Prudency hearing.

Public Service Commission erred in granting rate increases for a power company because it failed to comply with the Base Load Act and exceeded its authority granted by the Act; by stipulation, the Commission improperly deferred prudency hearings, which were a prerequisite to granting an increase in rates, and in the absence of prudency hearings, a rate could not be arbitrarily declared as fair, just, and reasonable. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

2. Construction work in progress.

There was no authorization to impose "mirror construction work in progress" in the Base

Load Act; the ratepayers' money was placed into a regulatory liability account controlled by the Public Service Commission, and thus, the money exacted was not being used to pay for funds used during construction as expenses were incurred but was confiscated through governmental decree by a rate increase imposed by a privately owned corporation that could not spend it. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

Public Service Commission does not have unbridled authority to adopt recovery mechanisms which are not authorized by existing law; while the Base Load Act permits the Commission to include construction work in progress (CWIP) in the utility's rate base and rates, the Act does not authorize the Commission to adopt an entirely new mechanism, i.e., "mirror CWIP," a concept not previously recognized in Mississippi rate-making practices. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

3. Due process.

Public Service Commission deprived ratepayers of procedural due process by failing to require notice to the ratepayers; no notice of the original filing was provided to the ratepayers. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

By approving increased rates based on "mirror construction work in progress" recovery, the Public Service Commission deprived the ratepayers of their money, and the increased rates were not being used to pay for funds during construction as provided by the Base Load Act but were confiscated through governmental decree by rate increase imposed by a privately owned corporation that could not spend it; the taking of private funds is a transfer of property and results in the deprivation of property. Miss. Power Co. v. Miss. PSC, 168 So. 3d 905, 2015 Miss. LEXIS 315 (Miss. 2015).

§ 77-3-106. Rate mitigation plan; proposal, scope, approval, implementation.

(1) As used in this section:

(a) The term "rate mitigation plan" means a rate plan designed to mitigate the initial rate impacts of collecting the revenue requirements associated with the inclusion of a newly constructed generating facility in rate base and rates by establishing a plan for collecting or phasing in the revenue requirements over a period that is not to exceed ten (10) years.

(b) The term "generating facility" shall have the same meaning as defined in Section 77-3-103.

(2) A rate mitigation plan may be approved by the commission in connection with a generating facility that is owned, in whole or in part, by an electric public utility whose rates are subject to the jurisdiction of the commission in accordance with the procedures contained in this section. The rate mitigation plan:

(a) Shall be proposed by an electric public utility through a separate petition or by an electric public utility in connection with any other rate proceeding pending before the commission related to a generating facility;

(b) Shall be implemented through rate schedules, rate riders, methods, formulas or other mechanisms, which have previously been proposed by the electric public utility or, if amended, are subsequently agreed to by the electric public utility;

(c) Shall not be requested or filed earlier than twelve (12) months prior to the beginning of the calendar year in which a generating facility is scheduled to be placed into commercial operation; and

(d) Shall be limited in scope to only the investment, expenses, revenues and rates of return associated with the construction, ownership and operation of a generating facility and all related assets, facilities and equipment incurred or to be incurred through the end of the rate mitigation period. The commission's review of a rate mitigation plan shall be conducted and all existing and applicable statutes and rules related thereto shall be enforced in a manner consistent with the limitations prescribed in this subsection (2)(d).

(3) Subject to the limitation contained in subsection (2)(d) above any filing by an electric public utility requesting a rate mitigation plan shall:

(a) Present a rate mitigation plan by providing the information required in Section 77-3-37(2)(e), (f) and (g) for each year of the proposed rate mitigation period; and

(b) Present a conventional rate recovery proposal without a rate mitigation plan by complying with Section 77-3-37(2).

(4) Subject to the limitation contained in subsection (2)(d) of this section, the commission's consideration of any rate mitigation plan shall be governed by all of the provisions of Article 1 and 2 of this Chapter 3, Title 77, except Sections 77-3-37(4) and 77-3-105(2)(c) and any rules promulgated and related thereto.

(5) In approving any rate mitigation plan, the commission:

(a) Shall include a finding establishing the initially approved rate base;

(b) Shall consider and evaluate the revenues, costs, rate base and returns applicable over the entire rate mitigation period; and

(c) Shall, for the rate mitigation period, allow recovery of a return, not to exceed the weighted cost of capital rate of return approved in the rate mitigation plan, on the balance of any unrecovered or deferred amounts accrued pursuant to the rate mitigation plan for the account of either the electric public utility or the electric public utility's retail customers during the rate mitigation period.

(6) Following the implementation of any rate mitigation approved by the commission, revenue adjustments made during and in accordance with the rate mitigation plan shall not constitute changes in rates pursuant to Sections 77-3-37 or 77-3-39. The revenues, investment, expenses and rate of return applicable to a commission-approved rate mitigation plan shall, during the rate mitigation period, be excluded from the calculation of rates for the subject electric public utility in any other rate proceeding before the commission.

(7) The authority granted to the commission herein to implement a rate mitigation plan shall not be deemed to be in conflict of the requirements of Sections 77-3-33 and 77-3-43.

(8) Notwithstanding Section 77-3-41, Section 77-3-61, or any other provision of Title 77, any order implementing a rate mitigation plan under this article shall be irrevocable once there is a final order for which the time for all appeals has expired. A final order implementing a rate mitigation plan shall, during the rate mitigation period, be binding in all future regulatory proceedings affecting such generating facility or rates or charges associated with such generating facility. Neither the commission nor any other governmental authority established by Mississippi law may amend, modify, or terminate the rate mitigation plan by any subsequent action or reduce, impair, postpone, terminate or otherwise adjust the charges established by the rate mitigation

plan order until after the rate mitigation period has elapsed and such rate mitigation plan may then only be revised in accordance with Article 1 of this Chapter 3, Title 77. Notwithstanding anything contained herein to the contrary, nothing in this section shall diminish, or be construed to diminish, the power and authority of the commission in the event the generating facility is abandoned, cancelled or otherwise fails to become used and useful in the provision of electric service.

(9) The rates and charges in effect at the end of the rate mitigation period shall remain in effect after the rate mitigation plan unless and until modified in accordance with Article 1 of this Chapter 3, Title 77.

HISTORY:
Laws, 2013, ch. 306, § 1, eff from and after passage (approved Feb. 26, 2013).

Editor's Notes —
Laws of 2013, ch. 306, § 2, provides:

"SECTION 2. The provisions of this act shall be deemed to be full and complete authority for the exercise of the powers therein granted."

§ 77-3-107. Rules and regulations; preference for ownership of generating facilities by certain electric public utilities.

The commission is fully empowered and authorized to promulgate rules and regulations as may be necessary to effectuate the provisions of this article, which may include a preference for ownership, in whole or in part, of a generating facility by an investor-owned electric public utility operating in the State of Mississippi or by an electric public utility owning and operating generation and transmission facilities in the State of Mississippi that, prior to January 1, 2008, was organized under Chapter 184, Laws of 1936 [See Editor's Note below], and was comprised of corporate members each of which is an electric power association under Chapter 184.

HISTORY:
Laws, 2008, ch. 531, § 4, eff from and after passage (approved May 9, 2008).

Editor's Notes —
Chapter 184, Laws of 1936, is codified within Article 5 of Chapter 5 of Title 77. For a complete list of Code sections affected by Chapter 184, Laws of 1936, see Statutory Tables Volume, Table B, Allocation of Acts, 1936.

§ 77-3-109. Legislative Advisory Board on Alternate Method of Cost Recovery on Base Load Generation; purpose; composition.

There is hereby created the Legislative Advisory Board on Alternate Method of Cost Recovery on Base Load Generation for the purpose of advising the Public Service Commission in the performance of its duties and to require the commission to make a written report to the advisory board every six (6) months regarding any activities pertaining to base load generation. The advisory board shall be composed of the following:

(a) The Chairman and Vice Chairman of the House Public Utilities Committee, or their designees;

(b) The Chairman and Vice Chairman of the Senate Public Utilities Committee, or their designees;

(c) The Chairman of the House of Representatives Appropriations Committee, or his designee;

(d) The Chairman of the Senate Appropriations Committee, or his designee;

(e) The Chairman of the House of Representatives Ways and Means Committee, or his designee; and

(f) The Chairman of the Senate Finance Committee, or his designee.

Members of the advisory board shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the advisory board shall be paid to legislative members while the Legislature is in session.

HISTORY:

Laws, 2008, ch. 531, § 5, eff from and after passage (approved May 9, 2008).

MISSISSIPPI PUBLIC UTILITY RATE MITIGATION AND REDUCTION ACT

Sec.

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§ 77-3-111. Definitions.

As used in Sections 77-3-111 through 77-3-127:

(a) "Assignee" means any person or legal entity to which an interest in security property is sold, assigned, transferred or conveyed (other than as security) and any successor to or subsequent assignee of such a person or legal entity.

(b) "Bondholder" means any holder or owner of a rate reduction bond.

(c) "Commission" means the Mississippi Public Service Commission.

(d) "Financing costs" means:

(i) Any payment made on or before issuance of rate reduction bonds and any amount required to fund any reserves or other accounts established pursuant to the terms of any financing order, indenture or other financing documents pertaining to rate reduction bonds;

(ii) Principal, interest and acquisition, defeasance or redemption premiums and all other amounts that are payable on rate reduction bonds;

(iii) Any amount required to be paid under any financing document;

(iv) Any amount required to fund or replenish any reserves or other accounts established pursuant to the terms of any financing order, indenture, financing document or other financing document pertaining to rate reduction bonds;

(v) Any taxes, fees, franchise, transfer, profits, license, excise, severance, customs, duties, assessments or other charges imposed by any governmental or taxing authority on the rate reduction bond charge revenue whether paid, payable or accrued;

(vi) Any other cost related to issuing, supporting, repaying, servicing, retiring, refinancing or refunding rate reduction bonds and all other required amounts payable in connection therewith, including, but not limited to, servicing fees and expenses, accounting and auditing fees and expenses, legal fees and expenses, consulting fees and expenses, security registration fees, trustee fees and expenses, insurance premiums, administrative fees, placement and underwriting fees, rating agency fees, stock exchange listing fees, compliance fees, costs to create or amend financing documents, and costs to obtain waivers, consents or approvals;

(vii) Any costs and expenses associated with the creation, operation, management and winding up of any special purpose entity created by the electric public utility in connection with the issuance of rate reduction bonds; and

(viii) Any other costs deemed appropriate by the commission.

(e) “Financing document” or “financing documents” means any bond, insurance policy, letter of credit, reserve account, surety bond, swap agreement, hedging arrangement, liquidity or credit support arrangement, trust indenture, security agreement, pledge agreement, financing agreement, transfer or assignment document, or other document or financial arrangement entered into in connection with the issuance of rate reduction bonds.

(f) “Financing party” shall include any and all of the following:

(i) Any trustee, collateral agent, or other person acting on behalf or for the benefit of any bondholder under any financing document; or

(ii) Any party to a financing document, the rights and obligations of which relate to or depend upon the existence of security property, the enforcement and priority of a security interest in security property, the timely collection and payment of rate reduction bond charge revenues, or a combination of any of the foregoing.

(g) “Financing statement” shall have the same meaning as that provided in Article 9 of the Uniform Commercial Code, as same may be amended from time to time.

(h) “Issuing entity” means any person or legal entity, including, but not limited to, any corporation, limited liability company, partnership, limited partnership, public authority or trust, that issues rate reduction bonds pursuant to a financing order issued pursuant to Sections 77-3-111 through 77-3-127.

(i) "Non-bypassable" means, with respect to rate reduction bond charges, that, so long as rate reduction bonds are outstanding and the related financing costs have not been recovered in full, such charges cannot be avoided by any retail customer of the electric public utility, including special contract customers, or any other person located within the electric public utility's certificated area that is directly or indirectly connected to electric facilities of the electric public utility or its successors or assignees and receiving retail electric service pursuant to a commission approved rate, even if such retail customer or other person elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of electric public utilities in this state.

(j) "Qualifying facility" shall mean a generating facility as the term is defined in Section 77-3-103:

(i) That uses coal gasification or clean coal technology with a coal fuel stock derived, in whole or in part, from the State of Mississippi; and

(ii) That is placed into commercial operation on or before December 31, 2020.

(k) "Qualifying facility cost" means any cost incurred or expected to be incurred by an electric public utility related to a qualifying facility, including, but not limited to, pre-construction costs, construction costs, capitalized cost relating to a regulatory asset, any amounts accrued as allowance for funds used during construction and construction work in progress.

(*l*) "Rate reduction bonds" or "bonds" means those debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by an issuing entity under a financing order, the proceeds of which are used directly or indirectly to recover, finance or refinance generation facility costs and financing costs, and that are secured by or payable from security property and which shall have a maturity date of no more than twenty (20) years after the date of issuance.

(m) "Rate reduction bond charge" means the nonbypassable tariff, rate, charge, formula or mechanism established in a financing order to fully recover financing costs, which is to be imposed on, and as a part of, all retail customer bills, including special contract customer bills, and collected by an electric public utility or its successors or assignees, or a collection agent, separate and apart from the base rates of the electric public utility.

(n) "Rate reduction bond charge revenue" means any and all revenues, receipts, collections, claims, rights to payments, payments, monies or other proceeds arising from the security property and collected by an electric public utility or other collection agent that is attributable to a rate reduction bond charge.

(o) "Secured party" means a financing party to which an electric public utility, issuing entity or their respective successors or assignees mortgages, negotiates, hypothecates, grants, pledges, or creates a security interest or lien on all or any portion of the rights in or to the security property.

(p) "Security property" means all rights and interests of an electric public utility established upon the issuance of a financing order under Sections 77-3-111 through 77-3-127, including, but not limited to:

(i) The right to bill and to obtain periodic true-up adjustments to the rate reduction bond charge as provided in the financing order and Sections 77-3-111 through 77-3-127;

(ii) The right to receive rate reduction bond charge revenue, as periodically adjusted, imposed, billed, collected and transferred; and

(iii) All revenues, receipts, collections, claims, rights to payments, payments, money or other proceeds arising from the rights and interests described in subparagraphs (i) and (ii) of this subsection, regardless of whether such collections, claims, rights to payment, payments, money or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, receipts, collections, rights to payment, payments, money or other proceeds of an electric public utility or collection agent.

(q) "Uniform Commercial Code" shall have the same meaning as provided in Title 75 of the Mississippi Code of 1972.

HISTORY:

Laws, 2013, ch. 305, § 3, eff from and after passage (approved Feb. 26, 2013).

Editor's Notes —

Laws of 2013, ch. 305, §§ 1 and 2, provide:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Public Utility Rate Mitigation and Reduction Act.'

"SECTION 2. The Legislature finds, determines and declares the following to be in the public interest and the policy of the State of Mississippi:

"(1) It is the policy of the State of Mississippi to regulate the business of electric public utilities in such a manner that allows the recovery of prudently incurred costs.

"(2) Consistent with the policy of the State of Mississippi to seek out and implement measures designed to provide the lowest reasonable electric public utility rates, public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities, as compared to traditional utility ratemaking options available to the Public Service Commission, and ensures the continued financial strength of Mississippi electric public utilities.

"(3) Public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities and ensures the continued financial strength of Mississippi electric public utilities.

"(4) The reduction of customer rate impacts for base load electric generating facilities through securitization is in the public interest."

§ 77-3-113. Contents of petition.

(1) Subject to the agreement by the affected electric public utility, the commission shall cause to be financed, consistent with the procedures set forth in Sections 77-3-111 through 77-3-127, all qualifying facility costs found to be prudent by the commission that are incurred over the estimate of such costs presented by the electric public utility in the certificate proceeding for the qualifying facility, up to a maximum of One Billion Dollars ($1,000,000,000.00). To accomplish the goals contained herein, the commission shall enter a financing order authorizing the issuance of rate reduction bonds by an electric public utility and to make such other findings and determinations as are provided for in Sections 77-3-111 through 77-3-127. The commission shall utilize a competitive Requests for Proposals process to select any bond attorney or counsel and may not accept any proposal in excess of Five Hundred Thousand Dollars ($500,000.00).

(2) Upon request by the commission in accordance with the requirements of subsection (1) of this section, the electric public utility owning a qualifying facility, in whole or in part, and whose rates are subject to the jurisdiction of the commission, shall submit a petition presenting the following information:

(a) Describe the qualifying facility and related qualifying facility costs in rate base or to be included in rate base;

(b) Indicate the total amount of qualifying facility cost required to be financed by the electric public utility using proceeds from rate reduction bonds;

(c) Estimate the financing costs related to the rate reduction bonds;

(d) Describe and estimate the rate reduction bond charge necessary to recover the financing costs as they become due and the proposed period for recovery of such costs;

(e) Estimate the projected cost savings to customers based upon then current market conditions resulting from financing the qualifying facility cost with rate reduction bonds as opposed to including the amount of such cost in rate base and recovering the revenue requirements associated with such cost over the depreciable life of the qualifying facility;

(f) File with the commission direct testimony supporting the application; and

(g) Timely provide the commission or the public utilities staff, as applicable, such additional information and documentation as either may reasonably request.

HISTORY:

Laws, 2013, ch. 305, § 4, eff from and after passage (approved Feb. 26, 2013).

Editor's Notes —

Laws of 2013, ch. 305, §§ 1 and 2, provide:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Public Utility Rate Mitigation and Reduction Act.'

"SECTION 2. The Legislature finds, determines and declares the following to be in the public interest and the policy of the State of Mississippi:

"(1) It is the policy of the State of Mississippi to regulate the business of electric public utilities in such a manner that allows the recovery of prudently incurred costs.

"(2) Consistent with the policy of the State of Mississippi to seek out and implement measures designed to provide the lowest reasonable electric public utility rates, public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities, as compared to traditional utility ratemaking options available to the Public Service Commission, and ensures the continued financial strength of Mississippi electric public utilities.

"(3) Public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities and ensures the continued financial strength of Mississippi electric public utilities.

"(4) The reduction of customer rate impacts for base load electric generating facilities through securitization is in the public interest."

§ 77-3-115. Petition procedure.

(1) Proceedings on a petition submitted pursuant to Section 77-3-113 shall be disposed of in accordance with the provisions of Section 77-3-47 and applicable commission procedural rules, except that the provisions of this Section 77-3-115, to the extent applicable, shall control.

(2) Within seven (7) days after the filing of a petition, the commission shall issue a scheduling order, which sets a hearing date and provides for a

decision on the issuance of a financing order not more than one hundred twenty (120) days after the date the petition is filed.

(3) When deemed necessary by the Executive Director of the Public Utilities Staff, the staff shall conduct an independent investigation as to the electric public utility's petition for a financing order subject to and within the time limitations prescribed in Sections 77-3-111 through 77-3-127.

(4) Not more than one hundred twenty (120) days after the date the petition is filed, the commission shall issue a financing order or an order denying the petition.

(5) Any party to the commission proceeding may petition the commission for reconsideration of an order granting or denying a petition for the issuance of a financing order not more than seven (7) days after the date the order is issued. The commission shall rule on the petition for reconsideration not more than fourteen (14) days after the filing of such petition. A failure by the commission to act upon such petition for reconsideration within the specified time period shall be deemed a denial of the petition for reconsideration, and the order of the commission granting or denying a petition for the issuance of a financing order shall be deemed final.

(6) Any judicial review shall be as provided in Section 77-3-72; provided, however, that any person, other than the electric public utility that is the subject of the financing order, seeking to appeal a financing order issued pursuant to Sections 77-3-111 through 77-3-127, or any prudence determination related thereto, shall not perfect its appeal unless and until a bond of sufficient amount to protect the customer savings projected to be realized through the issuance of rate reduction bonds as determined by the commission in the financing order pursuant to Section 77-3-117(b) is filed with the commission prior to expiration of time provided under Section 77-3-72 for the filing of a notice of appeal. If an appeal of an order granting or denying a petition for the issuance of a financing order is perfected pursuant to the procedure provided above, the electric public utility shall be authorized to establish a regulatory asset for the purpose of deferring a return on the qualifying facility cost intended to be financed by the rte reduction bond proceeds equal to the utility's weighted average cost of capital until such time as there is a final financing order for which the time for all appeals has expired. A financing order shall provide that any and all deferred return of the electric public utility during the pendency of an appeal may be financed as qualifying costs pursuant to the provisions of Sections 77-3-111 through 77-3-127.

(7) The filing of a petition by an electric public utility, the issuance of a financing order, the issuance of rate reduction bonds and the implementation or adjustment of a rate reduction bond charge under Sections 77-3-111 through 77-3-127 shall not constitute a change in rates pursuant to Section 77-3-37 or 77-3-39.

HISTORY:

Laws, 2013, ch. 305, § 5, eff from and after passage (approved Feb. 26, 2013).

Editor's Notes —

Laws of 2013, ch. 305, §§ 1 and 2, provide: "SECTION 1. This act shall be known and may be cited as the 'Mississippi Public Utility Rate Mitigation and Reduction Act.'

"SECTION 2. The Legislature finds, determines and declares the following to be in the public interest and the policy of the State of Mississippi:

"(1) It is the policy of the State of Mississippi to regulate the business of electric public utilities in such a manner that allows the recovery of prudently incurred costs.

"(2) Consistent with the policy of the State of Mississippi to seek out and implement measures designed to provide the lowest reasonable electric public utility rates, public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities, as compared to traditional utility ratemaking options available to the Public Service Commission, and ensures the continued financial strength of Mississippi electric public utilities.

"(3) Public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities and ensures the continued financial strength of Mississippi electric public utilities.

"(4) The reduction of customer rate impacts for base load electric generating facilities through securitization is in the public interest."

§ 77-3-117. Commission's responsibility in issuing a finance order; establishment of a special purpose entity to act as issuing entity.

(1) In a financing order issued on behalf of an electric public utility, the commission shall:

(a) Specify the maximum amount of qualifying facility cost to be financed through the issuance of rate reduction bonds.

(b) Determine that the financing method proposed pursuant to Sections 77-3-111 through 77-3-127 is reasonably expected to result in lower overall costs to customers associated with the qualifying facility compared to including the qualifying facility cost amount specified in paragraph (a) of this subsection (1) in rate base and recovering the revenue requirements over the depreciable life of the qualifying facility.

(c) Provide that, until the rate reduction bonds are paid in full and all related financing costs are fully recovered, the imposition and collection of the rate reduction bond charge shall be nonbypassable as such term is defined in Sections 77-3-111 through 77-3-127.

(d) Establish and employ a formula-based true-up mechanism for making expeditious periodic adjustments in the rate reduction bond charge that customers are required to pay under the financing order and for making any adjustments to the rate reduction bond charge that are necessary to correct for any overcollection or undercollection of the rate reduction bond charge or to otherwise ensure the timely payment of financing costs.

(e) Specify the security property to be created in favor of the electric public utility upon the issuance of a financing order to secure prompt payment of the rate reduction bonds and all associated financing costs.

(f) Specify, to the extent reasonably practicable, the terms and conditions of the rate reduction bonds, including, but not limited to, repayment schedules, expected interest rates and financing costs; provided, however, the commission shall afford the issuing entity flexibility in establishing the terms and conditions for the rate reduction bonds to accommodate changes in market conditions, including, but not limited to, repayment schedules, interest rates, financing costs, collateral requirements, required debt service and other reserves, and the ability of the issuing entity, at its option, to effect a series of issuances of rate reduction bonds and correlated assignments, sales, pledges or other transfers of security property.

(g) Provide that the rate reduction bond charge be allocated to the customer rate classes or rate schedules in the same manner that each such class or rate schedule is allocated its portion of the revenue requirements associated with the qualifying facility included in the electric public utilities rate base and rates.

(h) Provide that upon the issuance of rate reduction bonds, the electric public utility shall institute the resulting initial rate reduction bond charge in accordance with the financing order and such initial rate reduction bond charge shall be final and effective upon the issuance of such rate reduction bonds without further action of the commission.

(i) Include any other conditions that the commission considers appropriate and that are not otherwise inconsistent with Sections 77-3-111 through 77-3-127.

(j) Unless otherwise specified in the financing order, any rate reduction bond charge revenue remaining after all financing costs have been paid in full shall be credited to the retail customers of the electric public utility in a manner to be determined by the commission.

(2) Following issuance of a financing order, the electric public utility may establish a special purpose entity for the purpose of acting as the issuing entity and such issuing entity may issue rate reduction bonds as provided in the financing order. The electric public utility retains sole discretion to establish a special purpose entity and cause it to issue rate reduction bonds. An issuing entity established by an electric public utility pursuant to Sections 77-3-111 through 77-3-127 shall not constitute a public utility pursuant to Section 77-3-3.

(3) If an electric public utility subject to a financing order creates a special purpose entity for the purpose of acting as the issuing entity, rate reduction bonds shall not be considered a debt of the electric public utility for regulatory or ratemaking purposes; but, the electric public utility shall have only a duty to collect and remit to the issuing entity all rate reduction bond charge revenue with respect to the rate reduction bonds. Similarly, the special purpose entity or any other assignee of security property shall have no ownership interest in the qualifying facility or any related facilities, property and assets of the electric public utility whether fully or partially financed with proceeds from rate reduction bonds.

(4) A financing order shall remain in full effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings of the electric public utility or its successors or assigns. Subsequent to the issuance of rate reduction bonds authorized by a financing order, the financing order shall be irrevocable, and the commission may not:

(a) Amend, modify or terminate the financing order by any subsequent action; or

(b) Reduce, impair, postpone, terminate or otherwise adjust the rate reduction bond charge and security property approved and established in the financing order except as provided in Section 77-3-119.

(5) At the request of an electric public utility, the commission may commence a proceeding and issue a subsequent financing order that authorizes the refinancing or refunding of rate reduction bonds issued pursuant to the original financing order if the commission finds that the subsequent financing order satisfies all of the criteria specified in Sections 77-3-111 through 77-3-127. Effective on retirement of the rate reduction bonds and the issuance of new rate reduction bonds, the commission shall adjust the related rate reduction bond charge accordingly.

HISTORY:

Laws, 2013, ch. 305, § 6, eff from and after passage (approved Feb. 26, 2013).

Editor's Notes —

Laws of 2013, ch. 305, §§ 1 and 2, provide:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Public Utility Rate Mitigation and Reduction Act.'

"SECTION 2. The Legislature finds, determines and declares the following to be in the public interest and the policy of the State of Mississippi:

"(1) It is the policy of the State of Mississippi to regulate the business of electric public utilities in such a manner that allows the recovery of prudently incurred costs.

"(2) Consistent with the policy of the State of Mississippi to seek out and implement measures designed to provide the lowest reasonable electric public utility rates, public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities, as compared to traditional utility ratemaking options available to the Public Service Commission, and ensures the continued financial strength of Mississippi electric public utilities.

"(3) Public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities and ensures the continued financial strength of Mississippi electric public utilities.

"(4) The reduction of customer rate impacts for base load electric generating facilities through securitization is in the public interest."

§ 77-3-119. Filing of true-up report by issuing entity; review by commission.

(1) If the commission issues a financing order and rate reduction bonds are issued, the issuing entity shall, as frequently as quarterly but no less frequently than annually, file with the commission a true-up report requesting the commission to review the rate reduction bond charge established in the financing order and authorize the true-up adjustments described herein. A copy of such report shall promptly be served upon the electric public utility collecting the rate reduction bond charge. The report shall present the amount of any overcollection or undercollection of the rate reduction bond charge and shall include a schedule applying the approved true-up adjustment mechanism authorized in the financing order and the resulting amount of any true-up adjustment required to ensure the recovery of revenues sufficient to provide for the timely payment of all financing costs when due.

(2) The commission's review of the true-up report shall be limited to a determination of the existence and amount of any mathematical errors in the report concerning the application of the approved true-up adjustment mechanism. Within thirty (30) days after receiving a true-up report pursuant to this section, the commission shall, if necessary, revise the rate reduction bond charge and notify the electric public utility of such revision, or, if no revision to the rate reduction bond charge is required, the commission shall so notify the electric public utility. A true-up report requesting to revise the rate reduction bond charge shall be deemed approved if the requested revision is neither

approved nor denied by the commission within thirty (30) days after the request is submitted.

(3) Any true-up report requesting a true-up adjustment of a rate reduction bond charge shall not constitute a change in rates and shall not be subject to the requirements of Section 77-3-37 or 77-3-39.

(4) Upon the adjustment of a rate reduction bond charge pursuant to this section and notification to the electric public utility, the electric public utility shall promptly adjust the rate reduction bond charge to become effective the next practicable billing cycle.

HISTORY:

Laws, 2013, ch. 305, § 7, eff from and after passage (approved Feb. 26, 2013).

Editor's Notes —

Laws of 2013, ch. 305, §§ 1 and 2, provide:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Public Utility Rate Mitigation and Reduction Act.'

"SECTION 2. The Legislature finds, determines and declares the following to be in the public interest and the policy of the State of Mississippi:

"(1) It is the policy of the State of Mississippi to regulate the business of electric public utilities in such a manner that allows the recovery of prudently incurred costs.

"(2) Consistent with the policy of the State of Mississippi to seek out and implement measures designed to provide the lowest reasonable electric public utility rates, public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities, as compared to traditional utility ratemaking options available to the Public Service Commission, and ensures the continued financial strength of Mississippi electric public utilities.

"(3) Public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities and ensures the continued financial strength of Mississippi electric public utilities.

"(4) The reduction of customer rate impacts for base load electric generating facilities through securitization is in the public interest."

§ 77-3-121. Rate reduction bond charge as nonbypassable charge; legal remedy for failure of electric public utility to remit payment of rate reduction bond charge revenues.

(1) The rate reduction bond charge is a nonbypassable charge, and in the event an electric public utility subject to a financing order, as a result of insolvency, sale, a fundamental change in regulation of electric public utilities in this State, or other reason, ceases to serve customers within all or a portion of its certificated area, the commission shall have the obligation to ensure that the rate reduction bond charge is collected and transmitted to the issuing entity by any subsequent electric public utility providing service in such certificated area, or portion thereof, no longer being served by the electric public utility that originally petitioned for the financing order.

(2) If an electric public utility fails to remit any required payment of rate reduction bond charge revenues to an assignee, issuing entity, financing party or bondholder, as applicable, such assignee, issuing entity, financing party or bondholder shall have no legal remedy either at law or equity against the electric public utility or its assets, except as specifically provided below:

(a) A court, upon application by an assignee, issuing entity, financing party or bondholder, shall order the sequestration and payment of the rate reduction bond charge revenues for the benefit of any bondholder, assignee, financing party and/or issuing entity.

(b) The court's order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric public utility or any affiliate thereof.

HISTORY:

Laws, 2013, ch. 305, § 8, eff from and after passage (approved Feb. 26, 2013).

Editor's Notes —

Laws of 2013, ch. 305, §§ 1 and 2, provide:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Public Utility Rate Mitigation and Reduction Act.'

"SECTION 2. The Legislature finds, determines and declares the following to be in the public interest and the policy of the State of Mississippi:

"(1) It is the policy of the State of Mississippi to regulate the business of electric public utilities in such a manner that allows the recovery of prudently incurred costs.

"(2) Consistent with the policy of the State of Mississippi to seek out and implement measures designed to provide the lowest reasonable electric public utility rates, public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities, as compared to traditional utility ratemaking options available to the Public Service Commission, and ensures the continued financial strength of Mississippi electric public utilities.

"(3) Public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities and ensures the continued financial strength of Mississippi electric public utilities.

"(4) The reduction of customer rate impacts for base load electric generating facilities through securitization is in the public interest."

§ 77-3-123. Security property.

(1) The security property shall constitute an existing, present and legally protectable property right that shall exist regardless of whether the rate reduction bond charges have been billed, have accrued, or have been collected, and notwithstanding any requirement that the value or amount of the property is dependent on the future provision of service to customers by the electric public utility.

(2) Security property authorized and established by a financing order shall continue to exist until the rate reduction bonds issued pursuant to such financing order are paid in full and all financing costs have been recovered in full.

(3) The security property authorized and established by a financing order and the interests of an assignee, bondholder, financing party or issuing entity in the security property are not subject to setoff, recoupment, counterclaim, surcharge, or defense by the electric public utility subject to the financing order or by any other person or entity, including as a result of the electric public utility's failure to provide past, present, or future services, or in connection with the bankruptcy, reorganization, or other insolvency proceeding of the electric public utility, any affiliate, or any other person or legal entity.

(4) All or any portion of security property created by a financing order may be sold, assigned, transferred or conveyed to an assignee for the purpose of acquiring, owning or administering the security property, issuing rate reduction bonds or a combination of these purposes. Any sale, assignment, transfer or conveyance of security property shall be governed by Sections 77-3-111 through 77-3-127.

(5) Any sale, assignment, transfer or conveyance of security property to an assignee shall constitute an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest

in, to and under the security property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A sale, assignment, transfer or conveyance shall be effective only when all of the following have occurred:

(a) The financing order has been issued and has become final;

(b) The sale agreement, purchase agreement or other documents evidencing the sale, assignment, transfer or conveyance of the security property have been executed and delivered to the assignee; and

(c) Value has been given for the security property.

(6) The characterization of the sale, assignment, transfer or conveyance of the security property as an absolute transfer and true sale and the corresponding characterization of the property interest of the assignee, shall not be affected or impaired by, among other things, the occurrence of any of the following factors:

(a) Commingling of rate reduction bond charge revenues with other revenues of the electric public utility or any assignor;

(b) The retention by the electric public utility or assignor of (i) a partial or residual interest, including an equity interest, in the security property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees or other fees imposed on the collection of rate reduction bond charge revenue;

(c) Any recourse that the assignee may have against the electric public utility or any assignor;

(d) Any indemnification rights, obligations or repurchase rights made or provided by the electric public utility or any assignor;

(e) The obligation of the assignor to collect and remit rate reduction bond charge revenue to or on behalf of an assignee;

(f) The regulatory or accounting treatment of the sale, assignment or transfer for tax, financial reporting or other purposes;

(g) Any application of the true-up mechanism as provided in Section 77-3-119;

(h) Granting or providing the bondholders a preferred right to the security property or credit enhancement by the electric public utility or its affiliates with respect to the rate reduction bonds; or

(i) Any rights or interests of the electric public utility in any remaining rate reduction bond charge revenue which may vest upon full payment of the rate reduction bonds as provided for in Section 77-3-117(1)(j).

(7) Once sold, transferred, assigned or conveyed to an assignee as provided in Sections 77-3-111 through 77-3-127, security property shall not be an asset of the electric public utility; but, the electric public utility shall have only a duty to collect and remit to the issuing entity all rate reduction bond charge revenue with respect to the rate reduction bonds.

HISTORY:

Laws, 2013, ch. 305, § 9, eff from and after passage (approved Feb. 26, 2013).

Editor's Notes —

Laws of 2013, ch. 305, §§ 1 and 2, provide: "SECTION 1. This act shall be known and may be cited as the 'Mississippi Public Utility Rate Mitigation and Reduction Act.'

"SECTION 2. The Legislature finds, determines and declares the following to be in the public interest and the policy of the State of Mississippi:

"(1) It is the policy of the State of Mississippi to regulate the business of electric public utilities in such a manner that allows the recovery of prudently incurred costs.

"(2) Consistent with the policy of the State of Mississippi to seek out and implement measures designed to provide the lowest reasonable electric public utility rates, public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities, as compared to traditional utility ratemaking options available to the Public Service Commission, and ensures the continued financial strength of Mississippi electric public utilities.

"(3) Public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities and ensures the continued financial strength of Mississippi electric public utilities.

"(4) The reduction of customer rate impacts for base load electric generating facilities through securitization is in the public interest."

§ 77-3-125. Security property as collateral to secure payment of financing costs; relation to Uniform Commercial Code.

(1) All or any portion of the security property may be pledged or otherwise used by the issuing entity as collateral or other security to secure the payment of financing costs. Except as specifically provided in Sections 77-3-111 through 77-3-127 or in any of the financing documents, only Sections 77-3-111 through 77-3-127 and not the Uniform Commercial Code shall govern:

(a) Security property and any right, title or interest of an electric public utility, an assignee or an issuing entity, whether before or after the issuance of a financing order, in such security property;

(b) The validity, creation, attachment, grant, perfection, priority and enforcement of liens and security interests in security property to secure payment of financing costs;

(c) The validity, attachment, perfection and priority with respect to the transfer of an interest or right or the pledge or creation of a security interest in any security property.

In the event of any conflict between Sections 77-3-111 through 77-3-127 and any other law regarding the provisions of Section 77-3-125, Sections 77-3-111 through 77-3-127 shall govern to the extent of the conflict.

(2) A valid, enforceable and attached lien and security interest in security property shall be created upon the occurrence of all of the following and in no other manner:

(a) The issuance of a financing order contemplating a security interest in the security property;

(b) The execution and delivery of a security agreement by the issuing entity in connection with the issuance of rate reduction bonds which grants a security interest in the security property; and

(c) The giving of value for the rate reduction bonds.

(3) A valid, enforceable and attached security interest may be created in the security property without any physical delivery of collateral or other act, and shall be perfected against all parties upon the filing of a financing statement in the Office of the Secretary of State of Mississippi and shall thereafter be a continuously perfected lien, and such security interest in security property shall have priority over any other lien, created by contract,

operation of law or otherwise, which may subsequently be perfected in the security property unless the holder of any such prior lien has agreed in writing otherwise.

(4) Any sale, assignment, transfer or conveyance of an interest in security property shall not affect the priority of a security interest previously perfected in such security property against all parties having claims of any kind, including any judicial lien or other lien creditors or any claims of the assignor or creditors of the assignor, other than creditors holding a prior security interest, ownership interest or assignment in the security property previously perfected in accordance with Sections 77-3-111 through 77-3-127.

(5) The filing of a financing statement with the Office of the Secretary of State of Mississippi in accordance with this section shall be the only method of perfecting a lien on or security interest in security property. The Office of the Secretary of State of Mississippi shall maintain any financing statement filed pursuant to this section in the same manner that the Office of the Secretary of State of Mississippi maintains financing statements filed against transmitting utilities under Section 75-9-501(b). The filing of any financing statement pursuant to this section shall be governed by the provisions regarding the filing of financing statements in Part 5 of Chapter 9, Title 75 of the Mississippi Code of 1972, codified at Miss. Code Ann. Section 75-9-501 et seq.; provided, however, no continuation statement need be filed to maintain a perfected, valid, enforceable and attached security interest in security property.

(6) The priority of a sale, assignment, transfer, conveyance, lien or security interest perfected in security property pursuant to Sections 77-3-111 through 77-3-127 is not impaired by any later modification of the financing order or security property, any application of the true-up adjustment mechanism, or by the commingling of funds arising from the security property with other funds of an electric public utility or collection agent, and any other right, title, lien or security interest that may apply to those funds shall be terminated as to all funds transferred to an issuing entity, assignee, or financing party directly or transferred to a segregated account for the benefit of an issuing entity, assignee, or financing party.

(7) The description of security property being sold, assigned, transferred or conveyed to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a secured party in any security agreement, pledge agreement, or other security document, or indicated in any financing statement, shall be sufficient if it describes the financing order that created the security property and states that such agreement or financing statement covers all or part of the security property described in such financing order. This subsection applies to all purported sales, assignments, transfers or conveyances of, and all purported grants or liens or security interests in, security property, regardless of whether the related agreements were entered into or financing statements were filed, before or after the original effective date of this subsection.

(8) Any right, title or interest pertaining to a financing order, including, but not limited to, the associated security property and rate reduction bond

charge revenues shall not be deemed proceeds of any right or interest other than in the financing order and the security property arising from the financing order.

HISTORY:

Laws, 2013, ch. 305, § 10, eff from and after passage (approved Feb. 26, 2013).

Editor's Notes —

Laws of 2013, ch. 305, §§ 1 and 2, provide:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Public Utility Rate Mitigation and Reduction Act.'

"SECTION 2. The Legislature finds, determines and declares the following to be in the public interest and the policy of the State of Mississippi:

"(1) It is the policy of the State of Mississippi to regulate the business of electric public utilities in such a manner that allows the recovery of prudently incurred costs.

"(2) Consistent with the policy of the State of Mississippi to seek out and implement measures designed to provide the lowest reasonable electric public utility rates, public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities, as compared to traditional utility ratemaking options available to the Public Service Commission, and ensures the continued financial strength of Mississippi electric public utilities.

"(3) Public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities and ensures the continued financial strength of Mississippi electric public utilities.

"(4) The reduction of customer rate impacts for base load electric generating facilities through securitization is in the public interest."

§ 77-3-127. Liability on rate reduction bonds issued under a financing order.

(1) Rate reduction bonds issued under a financing order shall not constitute a debt or a pledge of the faith and credit or taxing power of the State of Mississippi or of any county, municipality, or any other political subdivision of this state. The issuing entity, assignee, bondholders and financing parties shall have no right to have taxes levied by this state or the taxing authority of any county, municipality, or any other political subdivision of this state for the payment of the principal of, interest on or other financing costs related to rate reduction bonds. The issuance of rate reduction bonds does not, directly, indirectly, or contingently, obligate this state or any county, municipal corporation, or political subdivision of this state to levy any tax or make any appropriation for payment of the principal of, interest on or other financing costs related to the rate reduction bonds.

(2) The state pledges to and agrees with the bondholders, any issuing entity, and any other party under a financing order that the state will not take or permit any action that impairs the value of the security property under the financing order or, except as allowed under Section 77-3-119, reduce, alter or impair rate reduction bond charges that are imposed, charged, collected or remitted for the benefit of the bondholders, any assignee, and any issuing entity, until all principal, interest and redemption premium in respect of rate reduction bonds, all financing costs, all issuing costs and all amounts to be paid to an issuing entity are paid or performed in full. Any attempt by resolution, bill, motion, order, referendum, amendment, judgment, decision, opinion or other act made contrary to the above pledge by the legislative branch, executive branch, judicial branch, commission or citizenry which impairs or attempts to impair the security property shall require just compensation to the security property owner or owners prior to taking effect.

(3) An issuing entity may include the pledge specified in subsection (2) of this section in the rate reduction bonds, financing documents, and documentation related to the issuance and marketing of the rate reduction bonds.

HISTORY:

Laws, 2013, ch. 305, § 11, eff from and after passage (approved Feb. 26, 2013).

Editor's Notes —

Laws of 2013, ch. 305, §§ 1 and 2, provide:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Public Utility Rate Mitigation and Reduction Act.'

"SECTION 2. The Legislature finds, determines and declares the following to be in the public interest and the policy of the State of Mississippi:

"(1) It is the policy of the State of Mississippi to regulate the business of electric public utilities in such a manner that allows the recovery of prudently incurred costs.

"(2) Consistent with the policy of the State of Mississippi to seek out and implement measures designed to provide the lowest reasonable electric public utility rates, public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities, as compared to traditional utility ratemaking options available to the Public Service Commission, and ensures the continued financial strength of Mississippi electric public utilities.

"(3) Public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities and ensures the continued financial strength of Mississippi electric public utilities.

"(4) The reduction of customer rate impacts for base load electric generating facilities through securitization is in the public interest."

§ 77-3-129. Sections 77-3-111 through 77-3-127 deemed full and complete authority for exercise of powers granted therein.

The provisions of Sections 77-3-111 through 77-3-127 shall be deemed to be full and complete authority for the exercise of the powers therein granted. It is the intent of the Legislature that the authority provided under Sections 77-3-111 through 77-3-127 be limited to the implementation of alternate financing arrangements that may be contemplated by any agreement entered into by the Public Service Commission and the affected electric public utility relating to any qualifying facility as defined in Section 77-3-111.

HISTORY:

Laws, 2013, ch. 305, § 12, eff from and after passage (approved Feb. 26, 2013).

ARTICLE 3.

GENERAL PROVISIONS.

Sec.
77-3-201. Definitions.
77-3-203. Property owners' remedies upon utility's failure or refusal to provide service.
77-3-205. Determination of responsibility for costs where construction of facilities is undertaken by owner.
77-3-207. Owner's agreement with utility as to costs; contract for construction in absence of agreement.
77-3-209. Allocation of costs among proposed consumer outlets; reimbursement by utility.
77-3-211. Notice prior to construction; inspection during construction and upon completion; deviations.
77-3-213. Effect of conveyance of property after institution of proceedings on owner's rights.
77-3-215. Effect of transfer or assignment of public utility system.
77-3-217. Provisions are cumulative and not in derogation of prior law; conduct of proceedings and appeals.

§ 77-3-201. Definitions.

As used in this article, the following words and phrases shall include the meanings ascribed by this section unless the context requires a different meaning:

(a) "Owner" shall specifically refer to a holder of an interest in real property which is proposed to be served by a public utility as defined in subparagraph (iv) of paragraph (d) of Section 77-3-3. "Owner" shall include both the plural and the singular and any person, firm, corporation, association or combination of such entities.

(b) "Public utility" includes any person, firm, corporation or association and any public body, political subdivision, agency or instrumentality thereof owning or owning and operating a public utility service described by subparagraph (iv) of paragraph (d) of Section 77-3-3. However, an incorporated municipality which owns or owns and operates such a described public utility service shall not be subject to the provisions of this article. The term "public utility" also includes the successors and assigns of any such public utility.

HISTORY:
Codes, 1942, § 7716-56; Laws, 1968, ch. 504, § 6, eff from and after passage (approved July 4, 1968).

Editor's Notes —
At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (a) and (b) was corrected by substituting "subparagraph (iv) of paragraph (d)" for "subparagraph (4) of paragraph (d)."

RESEARCH REFERENCES

ALR.
Liability of one other than electric power or light company or its employee for interruption, failure, or inadequacy of electric power. 15 A.L.R.4th 1148.

Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority. 85 A.L.R.4th 894.

§ 77-3-203. Property owners' remedies upon utility's failure or refusal to provide service.

If any public utility, other than a municipality, shall fail or refuse to construct within its certificated area any facilities necessary to provide public utility service, or shall fail or refuse to make written commitment to do so, within a reasonable time after written request for such service by any owner of property, which request shall specify with reasonable particularity the type of service desired, such owner may, in addition to any other legal or administrative remedy provided by law and either separately or jointly with any other owner or owners in the area affected, pursue either of the following alternatives or a combination thereof:

(a) In the name of such owner or jointly with any other person, firm or corporation, pursuant to the provisions of Section 77-3-13, apply to the Mississippi Public Service Commission for a certificate of public convenience and necessity to construct the appropriate facilities for furnishing such service or services and to furnish the same within the area affected, and, provided the commission finds that the cancellation of the outstanding certificate would be in the best interest of the consuming public as provided by Section 77-3-21, the fact that a certificate for the same type service or services may have been previously issued to the public utility failing or refusing to furnish such service shall not be prejudicial to such application; or

(b) File with the Mississippi Public Service Commission a set of proposed plans for construction of such facilities and connection of the same with the system or systems of the utility or utilities affected, such plans to conform in all respects to all reasonable requirements of said commission and any other public body having lawful authority to establish standards of construction. The owner shall give twenty (20) days' notice of such filing to said commission and any other public bodies aforesaid and to the public utility or utilities holding a certificate for the area affected. If, after such notice and opportunity for protest and hearing thereon, the commission shall approve such plans or any modification thereof as being supported by present or future public convenience and necessity, the owner may give notice as hereinafter provided and then proceed to let contracts for the construction of the same or to construct the same and, upon proper completion thereof and conveyance or assignment of such facilities and easements to the utility, the holder of the certificate for the area and service affected shall be obliged promptly to connect the same to its systems and provide such service.

HISTORY:

Codes, 1942, § 7716-51; Laws, 1968, ch. 504, § 1, eff from and after passage (approved July 4, 1968).

RESEARCH REFERENCES

ALR.

Civil Rights: racial or religious discrimination in furnishing of public utilities services or facilities. 53 A.L.R.3d 1027.

Right of public utility to deny service at one address because of failure to pay for past service rendered at another. 73 A.L.R.3d 1292.

CJS.

73B C.J.S., Public Utilities §§ 5, 6, 8.

§ 77-3-205. Determination of responsibility for costs where construction of facilities is undertaken by owner.

If such plans or any modification thereof shall be approved by the commission as provided by paragraph (b) of Section 77-3-203, the commission may enter an order either in conjunction with such approval, if notice has sufficiently dealt with the subject matter, or pursuant to special application and notice thereof to the parties, that will determine whether the right and responsibility of constructing the facilities for making such connection shall devolve on the owner or the utility and whether the whole or any part of the reasonable expense of connecting such facilities with the system or systems of the utility or utilities affected should be borne initially by such utility or utilities. If the commission should relieve any utility affected from initially undertaking the whole or any part of such connection expense, the commission may nevertheless include the portion of such expense to be initially borne by the owner in the cost of facilities for which the owner may be reimbursed as hereinafter provided.

HISTORY:
Codes, 1942, § 7716-52; Laws, 1968, ch. 504, § 2, eff from and after passage (approved July 4, 1968).

JUDICIAL DECISIONS

1. In general.
Under §§ 77-3-201 et seq., the public service commission was authorized to determine whether the right and the responsibility of constructing water and sewer facilities to connect with the system of the utility affected should be with the owner or the utility, and whether the whole or any part of the expense of connecting the facilities with the system should be borne initially by the utility, and whether the owner should be reimbursed by the utility for that portion of reasonable cost of construction of the facilities and the connection expense or part thereof approved by the commission. Hinds-Rankin Metropolitan Water & Sewer Ass'n v. Mississippi Public Service Com., 263 So. 2d 546, 1972 Miss. LEXIS 1334 (Miss. 1972).

§ 77-3-207. Owner's agreement with utility as to costs; contract for construction in absence of agreement.

In the event an owner is authorized to construct or cause to be constructed the whole or any part of such proposed facilities pursuant to paragraph (b) of Section 77-3-203 or pursuant to such authority and Section 77-3-205, the owner may first reach written agreement with the holder of the certificate for the area and service affected as to the reasonable cost of doing so, or for a maximum figure of reasonable cost of doing so, which reasonable cost in either event shall be subject to approval of the public service commission. If no such agreement can be reached, the owner may publish notice that bids will be received for construction of the same, which notice shall be published in the manner and for the time as required by law for publication of such notices with respect to contracts for construction by boards of supervisors of counties of this state. However, no contract shall be consummated pursuant thereto until the contract shall be approved by the commission. No such contract shall be executed unless the contractor shall furnish a good and sufficient surety bond, executed by the contractor or contractors and one or more surety companies authorized to do business in this state for the faithful performance of such contract.

HISTORY:
Codes, 1942, § 7716-53; Laws, 1968, ch. 504, § 3, eff from and after passage (approved July 4, 1968).

§ 77-3-209. Allocation of costs among proposed consumer outlets; reimbursement by utility.

Upon approval by the public service commission of the reasonable cost of construction of the necessary facilities for furnishing such service and the whole or a reasonable part of the expense of connecting such facilities with the system of the utility affected, the owner may apply to said commission for an apportionment of such costs among the proposed outlets for consumer service. Any final order of allocation by the commission shall be binding upon the owner and the public utility affected. After such allocation has been made, the public utility affected shall be obliged to reimburse to the owner that portion of the reasonable cost of construction of such facilities and connection expense or the portion thereof approved by the commission, to the extent of the respective amount thereof allocated to any proposed consumer outlet, such reimbursement to be made within thirty (30) days of commencement of consumer service at such outlet.

HISTORY:
Codes, 1942, § 7716-54; Laws, 1968, ch. 504, § 4, eff from and after passage (approved July 4, 1968).

§ 77-3-211. Notice prior to construction; inspection during construction and upon completion; deviations.

Before construction shall be undertaken pursuant to paragraph (b) of Section 77-3-203 or Section 77-3-205, five (5) days' written notice shall be given to the public service commission and any other public body having lawful authority over standards of such construction, the public utility affected, and each owner instituting proceedings unless notice for that period shall be waived. Each party in interest and each public body affected shall have the right of entry and inspection of such construction as it progresses and, in addition to any other remedy at law or in equity, may obtain a cease and desist order from the commission to prevent any unauthorized deviation from the plans or modifications thereof approved by said commission or from the reasonable requirements of said commission or other public body aforesaid. All parties entitled to notice shall have the right of inspection of such facilities upon completion. No public utility shall be obliged to accept any conveyance or assignment of such facilities that may be disapproved by said commission or other public body having lawful authority over standards of construction or use of the same or that may be subject to any lien or encumbrance other than the obligation of reimbursement provided for by this article.

HISTORY:
Codes, 1942, § 7716-55; Laws, 1968, ch. 504, § 5, eff from and after passage (approved July 4, 1968).

§ 77-3-213. Effect of conveyance of property after institution of proceedings on owner's rights.

The conveyance in whole or in part of the property affected after institution of proceedings under this article shall not divest the owner, his heirs, personal representatives, successors or assigns of his, its or their rights accrued under this article unless the same be specifically conveyed or assigned by such conveyance or other written instrument.

HISTORY:
Codes, 1942, § 7716-56; Laws, 1968, ch. 504, § 6, eff from and after passage (approved July 4, 1968).

§ 77-3-215. Effect of transfer or assignment of public utility system.

The transfer or assignment of the whole or any part of the public utility system of any such public utility shall not defeat any prior right of service, service connection or reimbursement accrued under this article.

HISTORY:
Codes, 1942, § 7716-56; Laws, 1968, ch. 504, § 6, eff from and after passage (approved July 4, 1968).

§ 77-3-217. Provisions are cumulative and not in derogation of prior law; conduct of proceedings and appeals.

The provisions of this article shall be cumulative to, and not in derogation of, Sections 77-3-21 and 77-3-29.

Any proceedings under the provisions of this article before the public service commission shall be held and conducted as provided by Article 1 of this chapter. Appeals shall be available as a matter of right as provided by Sections 77-3-67 to 77-3-73.

HISTORY:
Codes, 1942, § 7716-57; Laws, 1968, ch. 504, § 7, eff from and after passage (approved July 4, 1968).

ARTICLE 5.

OPTIONAL RATE SCHEDULES.

Sec.
77-3-301. Optional rate schedules and minimum charges to be provided in lieu of service charges.
77-3-303. Itemized bills required.
77-3-305. Violations.
77-3-307. Exemptions.

§ 77-3-301. Optional rate schedules and minimum charges to be provided in lieu of service charges.

Any person, firm, copartnership or corporation doing business in the State of Mississippi and engaged in the sale or distribution of electricity, gas or water, whose rates or tariffs for such service contain any form of so-called “service charge,” shall be required to have fair and reasonable optional rate schedules and minimum charges that do not contain any form of such so-called “service charge,” so that the consumer may exercise his option as to the form of rate schedule under which said consumer will be billed for service used. Such optional rate schedules shall not require the payment for each unit of electricity, gas, or water consumed, at a rate in excess of the rates per unit prescribed for use which were in effect prior to the establishment of a “service charge” by such person, firm or corporation affected hereby.

HISTORY:
Codes, 1942, § 5551; Laws, 1934, ch. 318.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities § 42.

Practice References.
Accounting for Public Utilities (Matthew Bender).

§ 77-3-303. Itemized bills required.

All bills rendered to consumers by any public service utility affected by this article shall be itemized so as to show in detail the amount of electricity, gas or water consumed and the rate per unit charged.

HISTORY:
Codes, 1942, § 5551; Laws, 1934, ch. 318.

§ 77-3-305. Violations.

Any amount of money collected by any public utility in wilful violation of Section 77-3-303 may be recovered by an action at law by the consumer from whom it was collected. In addition thereto, any person, firm, copartnership or corporation violating the provisions of this article, shall be guilty of a misdemeanor and upon conviction shall be fined not more than $50.00 for each offense.

HISTORY:
Codes, 1942, § 5551; Laws, 1934, ch. 318.

Cross References —
Criminal offense of supplier of electricity, water or gas installing meters registering excessive usage, see § 97-25-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 77-3-307. Exemptions.

The provisions of this article shall not apply:

(a) to municipally or privately owned plants where a flat charge only is made, and no meters are in operation;

(b) to any municipally owned and/or operated public service utility, the net income of which said utility is used solely for governmental purposes and/or for the discharge of governmental obligations and not for private gain;

(c) to the Tennessee Valley Authority or any municipality that purchases gas, water or electric lights and power from the Tennessee Valley Authority; or

(d) to any state corporation chartered by the State of Mississippi, or any corporation doing business in the State of Mississippi, which buys electric current and/or power from the Tennessee Valley Authority for distribution for domestic and/or commercial purposes.

HISTORY:
Codes, 1942, § 5551; Laws, 1934, ch. 318.

ARTICLE 7.

DETERMINATION OF ADEQUACY OF SERVICE BY TELEGRAPH AND TELEPHONE COMPANIES.

Sec.

77-3-401. Determination of adequacy of service initiated by petition of attorney general.
77-3-403. Notice to corporation to appear before commission.
77-3-405. Distinct findings of fact to be made by commission.
77-3-407. Issuance of order requiring changes in service.
77-3-409. Removal of proceedings to circuit court.
77-3-411. Forfeiture of charter for failure to make changes.
77-3-413. Certiorari to circuit court.
77-3-415. Appeal from judgment of circuit court.
77-3-417. Effect of receivership proceedings.
77-3-419. Liquidation of business.
77-3-421. Operations within same territory by second company following forfeiture of first company's charter.
77-3-423. Necessity that sales, leases or transfers be made to company capable of providing adequate service.
77-3-425. Continuation of service in event of sale of business.

§ 77-3-401. Determination of adequacy of service initiated by petition of attorney general.

Upon the petition therefor by the attorney general, the Mississippi public service commission shall have jurisdiction to determine, after reasonable notice and hearing, whether any domestic telephone or telegraph public service corporation operating under the jurisdiction of the commission, is rendering in a reasonably adequate manner the public service authorized by its charter of incorporation.

HISTORY:
Codes, 1942, § 7704; Laws, 1940, ch. 132.

Cross References —

Constitutional declaration of telegraph and telephone companies as common carriers subject to liability as such, see MS Const Art. 7, § 195.

Duty of attorney general to assist and advise commission generally, see § 7-5-49.

Telegraph and telephone companies generally, see § 77-9-701 et seq.

§ 77-3-403. Notice to corporation to appear before commission.

Upon the filing of a petition therefor by the attorney general with the public service commission, notice shall be given any such corporation requiring the corporation to appear before the commission at a day certain, not less than thirty (30) days, and to show cause why it should not be required within a reasonable time, not less than sixty days after such hearing, to obey the order of the commission made on such hearing. A copy of the petition shall be attached to such notice. Such notice shall be served by mailing it by registered United States mail to any executive officer of such corporation at his usual post office address.

HISTORY:
Codes, 1942, § 7705; Laws, 1940, ch. 132.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities § 178.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Forms 6, 7 (notice of hearing).

§ 77-3-405. Distinct findings of fact to be made by commission.

Upon the hearing, the testimony shall be taken by the official stenographer of the commission. The commission shall make distinct findings of fact as to: (1) whether the corporation is or is not rendering in a reasonably adequate manner the public service authorized by the corporate charter of such corporation; (2) if not, what would be reasonably necessary to be done to make such service reasonably adequate; (3) whether by reason of its financial condition, such corporation may be reasonably expected to make such changes as would be reasonably necessary to make such service reasonably adequate; (4) what would be a reasonable time, not less than sixty (60) days, within which such changes should be made.

The findings of fact by the commission if supported by substantial evidence, shall be conclusive, and shall not be reversed by any court.

HISTORY:
Codes, 1942, § 7706; Laws, 1940, ch. 132.

JUDICIAL DECISIONS

1. In general.
The public service commission is vested with power to adopt administrative orders to make judicial findings and adjudications, and the granting or denial by the commission of an application for certificate of public convenience and necessity, or the granting or denial of an application for a permit to operate as a contract carrier, shall be construed as a judicial finding and appealable as such. Illinois C. R. Co. v. Mississippi Public Service Com., 220 Miss. 439, 71 So. 2d 176, 1954 Miss. LEXIS 459 (Miss. 1954).

On appeal from an order of public service commission, the circuit court has the power to review the findings in actions of the commission, affirm, reverse, amend or change them and an appeal may be taken to the supreme court from the circuit court where the actions and findings of the commission and court may be reviewed, and where a federal question is involved an appeal may be taken to the Supreme Court of the United States. Illinois C. R. Co. v. Mississippi Public Service Com., 220 Miss. 439, 71 So. 2d 176, 1954 Miss. LEXIS 459 (Miss. 1954).

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities § 181.

§ 77-3-407. Issuance of order requiring changes in service.

If the commission shall find that the corporation may reasonably be expected to make changes in its service, which will render such service reasonably adequate, and shall specify such reasonable changes, and shall fix a time within which changes may be made, then the order of the commission shall be to such extent. If such changes are not made within the time fixed by the commission, the commission shall have authority to forfeit the charter of such corporation, upon five (5) days notice, and a hearing accorded upon the forfeiture. If the commission shall find that the corporation cannot reasonably be expected to make the necessary changes in its service which will render such service reasonably adequate, for reasons stated in the order, then the commission shall have the authority at such time to enter an order forfeiting the corporate charter of such corporation.

HISTORY:
Codes, 1942, § 7707; Laws, 1940, ch. 132.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities § 181.

§ 77-3-409. Removal of proceedings to circuit court.

The attorney general, or the corporation, may by certiorari out of the circuit court of the First Judicial District of Hinds County, Mississippi, within ten (10) days from the date of the order in the hearing provided in Section 77-3-403, remove the entire proceeding to such court, which removal shall not operate as a supersedeas. No supersedeas shall be allowed, but the circuit court or the circuit judge in vacation shall examine the record for errors of law. If the said court shall find no errors of law, the order shall be affirmed. If errors of law appear, it shall be reversed, and such reversal shall operate as a stay of such order, and no subsequent action on the charter forfeiture shall be taken by the commission on such order, but the cause shall be remanded to the commission with directions for a new hearing, or dismissed, as the circuit court finds appropriate by reason of errors of law appearing on the face of the record.

HISTORY:
Codes, 1942, § 7708; Laws, 1940, ch. 132.

Cross References —
Certiorari to circuit court, see § 77-3-413.

§ 77-3-411. Forfeiture of charter for failure to make changes.

If no proceedings are taken under Section 77-3-409, then at the expiration of ten (10) days from the date of such order, such order shall become final, from which no appeal shall lie, and the findings set out in such order shall be conclusively presumed to be correct. Unless the commission is satisfied the changes required by such order have been made within the time prescribed in such order, the commission shall give the notice of five (5) days, as provided in Section 77-3-407, and upon the hearing the commission shall determine whether such changes have or have not been made, as required. If the commission find that such changes have not been made as required, then it shall enter an order incorporating such finding, and forfeiting the charter of such corporation.

HISTORY:
Codes, 1942, § 7709; Laws, 1940, ch. 132.

RESEARCH REFERENCES

Am. Jur.
36 Am. Jur. 2d, Franchises from Public Entities §§ 49, 50 et seq.

§ 77-3-413. Certiorari to circuit court.

At any time within ten (10) days of the entry of the order forfeiting or refusing to forfeit such charter, the attorney general or the corporation may apply to the circuit court of the First Judicial District of Hinds County, for a writ of certiorari, which, if granted, shall have the effect of transferring the record of the last proceeding to the circuit court. The circuit court, or the circuit judge in vacation, shall examine such record for errors of law. If the said court shall find no errors of law, the order shall be affirmed. If errors of law appear, the order shall be reversed and such reversal shall operate as a stay of such order, and the cause shall be remanded to the commission with directions for a new hearing, or dismissal, as the circuit court finds proper from the examination of the record.

HISTORY:
Codes, 1942, § 7710; Laws, 1940, ch. 132.

§ 77-3-415. Appeal from judgment of circuit court.

Appeals from the order of the circuit court affirming or reviewing such order may be taken as other appeals are taken to the supreme court.

HISTORY:
Codes, 1942, § 7711; Laws, 1940, ch. 132.

§ 77-3-417. Effect of receivership proceedings.

Receivership proceedings at any stage in any court shall not affect any proceedings under the terms of this article. When a petition is filed under the terms of this article, exclusive jurisdiction shall be vested in the public service commission, and any pending receivership shall immediately be terminated, and the trustees shall be appointed by the commission under the terms of Section 77-3-419.

HISTORY:
Codes, 1942, § 7712; Laws, 1940, ch. 132.

Cross References —
Receivership proceedings generally, see §§ 11-5-151 et seq.

§ 77-3-419. Liquidation of business.

All of the provisions of Chapter 35 of Title 11 of the Mississippi Code of

1972 relative to the liquidation of corporations after forfeiture of charter shall apply to the liquidation of any such corporation if the charter thereof is forfeited under the terms of this article, except that the trustees shall be appointed by the public service commission.

HISTORY:
Codes, 1942, § 7713; Laws, 1940, ch. 132.

§ 77-3-421. Operations within same territory by second company following forfeiture of first company's charter.

After the entry of an order forfeiting the charter of incorporation of any telephone or telegraph company, no telephone or telegraph company, whether operated by a person, co-partnership or corporation, shall have the authority to enter the same territory, or any part of it, served by the corporation whose charter has been forfeited, until a certificate of public convenience and necessity is granted by the public service commission, which certificate shall not be granted unless the commission affirmatively finds that the applicant therein is financially able to render telephone or telegraph service within such territory in a reasonably adequate manner. The application for a certificate of public convenience and necessity shall be in such form as the commission may require.

HISTORY:
Codes, 1942, § 7714; Laws, 1940, ch. 132.

§ 77-3-423. Necessity that sales, leases or transfers be made to company capable of providing adequate service.

No sale, lease or transfer of any franchises or properties within Mississippi, or any part thereof, of any domestic telephone or telegraph company, whether operated by a person, firm or corporation, shall be valid unless, upon a hearing after reasonable notice, the commission shall find that the person, firm or corporation to whom such sale, lease or transfer is proposed to be made is financially and otherwise capable of rendering telephone or telegraph service in a reasonably adequate manner.

HISTORY:
Codes, 1942, § 7714; Laws, 1940, ch. 132.

RESEARCH REFERENCES

Am. Jur.
36 Am. Jur. 2d, Franchises from Public Entities §§ 57 et seq.

§ 77-3-425. Continuation of service in event of sale of business.

In the event any domestic telephone or telegraph company has, within eighteen months prior to May 7, 1940, sold, leased or transferred any of its franchises or properties within the State of Mississippi, then that person, firm or corporation to whom such properties were sold, leased or transferred, or any successor in title thereto, shall be under the obligation to render such telephone or telegraph service in a reasonably adequate manner, and the commission shall have the authority, upon petition of the attorney general, to proceed to investigate the operation of the telephone or telegraph business of the vendee, lessee or transferee, or any successor in title, in the same manner as is provided for in this article as to the domestic corporations. If the commission shall find, after such hearing as provided for domestic corporations, that such vendee, lessee or transferee, or any successor in title, is not rendering such service in a reasonably adequate manner, then the commission shall have the authority to require such changes to be made as it could in the case of domestic corporations, and if such changes are not made as required by the commission, then the commission shall have the authority to forfeit the right of such vendee, lessee, transferee, or any successor in title thereto, to operate a telephone or telegraph business. If the commission shall find that such vendee, lessee, transferee, or any successor in title, cannot be reasonably expected to render such service in a reasonably adequate manner, then the commission shall have the authority to forfeit the right of such vendee, lessee or transferee, or any successor in title, to operate a telephone or telegraph business within Mississippi, and shall appoint trustees for such business, as provided for in Section 77-3-419.

HISTORY:
Codes, 1942, § 7715; Laws, 1940, ch. 132.

ARTICLE 9.

AUTOMATIC DIALING-ANNOUNCING DEVICES.

Sec.	
77-3-451.	Definitions.
77-3-453.	Public Service Commission to regulate; application of article; hours of operation; use for purpose of inducing purchase of goods or services prohibited; exceptions.
77-3-455.	Requirements for placing calls using automatic dialing-announcing devices.
77-3-457.	Application to connect automatic dialing-announcing device; penalties.
77-3-459.	Legislative intent; retroactive effect of article.

§ 77-3-451. Definitions.

As used in this article, “automatic dialing-announcing device” means any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called and the capability, working alone or in conjunction with other equipment, to disseminate a prerecorded message to the telephone number called.

HISTORY:
Laws, 1989, ch. 436, § 1, eff from and after July 1, 1989.

Cross References —
Definition of “violation”, see § 77-3-457(a).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass. 95 A.L.R.3d 411.

Forum state's jurisdiction over nonresident defendant in action based on obscene or threatening telephone call from out of state. 37 A.L.R.4th 852.

Telephone calls as nuisance. 53 A.L.R.4th 1153.

Am. Jur.

74 Am. Jur. 2d, Telecommunications §§ 199-201.

§ 77-3-453. Public Service Commission to regulate; application of article; hours of operation; use for purpose of inducing purchase of goods or services prohibited; exceptions.

(1) The connection of automatic dialing-announcing devices to a telephone line is subject to this article and to the jurisdiction, control and regulation of the Public Service Commission.

(2) No person shall operate an automatic dialing-announcing device except in accordance with this article. The use of such device by any person, either individually or acting as an officer, agent or employee of a person or corporation operating automatic dialing-announcing devices, is subject to this article.

(3) No person shall operate an automatic dialing-announcing device to place a call which is received by a telephone in this state during the hours between 9 p.m. and 9 a.m. Central time zone.

(4) No person shall operate an automatic dialing-announcing device to place a call which is received by a telephone in this state for the purpose of persuading, inducing or encouraging the person called to purchase any type of product or service.

(5) This article does not apply to any automatic dialing-answering device which is not used to randomly or sequentially dial telephone numbers but which is used solely to transmit a message to an established business associate, customer or other person having an established relationship with the person using the automatic dialing-answering device to transmit the message, or to any call generated at the request of the recipient.

(6) The Public Service Commission may determine any question of fact arising under this section.

HISTORY:

Laws, 1989, ch. 436, § 2, eff from and after July 1, 1989.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass. 95 A.L.R.3d 411.

Forum state's jurisdiction over nonresident defendant in action based on obscene or threatening telephone call from out of state. 37 A.L.R.4th 852.

Telephone calls as nuisance. 53 A.L.R.4th 1153.

Validity, construction and application of Telephone Consumer Protection Act (47 USC § 227). 132 A.L.R. Fed. 625.

Am. Jur.

74 Am. Jur. 2d, Telecommunications §§ 199-201.

§ 77-3-455. Requirements for placing calls using automatic dialing-announcing devices.

(1) Automatic dialing-announcing devices may be used to place calls over telephone lines only pursuant to a prior agreement between the persons involved, by which the person called has agreed that he or she consents to receive such calls from the person calling, or as specified in subsection (2) of this section.

(2) Whenever telephone calls are placed through the use of an automatic dialing-announcing device, such device shall be operated by a person who shall do all of the following:

(a) State the nature of the call and the name, address and telephone number of the business or organization being represented, if any.

(b) Inquire whether the person called consents to hear the prerecorded message of the person calling.

(c) Disconnect the automatic dialing-announcing device from the telephone line upon the termination of the call by either the person calling or the person called.

HISTORY:

Laws, 1989, ch. 436, § 3, eff from and after July 1, 1989.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass. 95 A.L.R.3d 411.

Forum state's jurisdiction over nonresident defendant in action based on obscene or threatening telephone call from out of state. 37 A.L.R.4th 852.

Telephone calls as nuisance. 53 A.L.R.4th 1153.

Validity, construction and application of Telephone Consumer Protection Act (47 USCS § 227). 132 A.L.R. Fed. 625.

Am. Jur.

74 Am. Jur. 2d, Telecommunications §§ 199-201.

§ 77-3-457. Application to connect automatic dialing-announcing device; penalties.

No person shall connect any automatic dialing-announcing device to any telephone line without first making written application to the telephone corporation within whose service area telephone calls through the use of such device are proposed to be placed. In such application, the person shall provide information as to the type of automatic dialing-announcing device proposed to be connected, the time of day such telephone calls are proposed to be placed using such device, the anticipated number of calls proposed to be placed during the specified calling period, the average length of a completed call and such additional information as the corporation or the commission may require.

Upon receiving such an application for service, the corporation shall review the furnished information and, if it appears that calling patterns would create a traffic overload condition or the service would be detrimental to the services of other customers of the corporation, it may deny the application or modify the application and grant the application as so modified.

Any person violating this article is guilty of a civil offense and is subject to either or both of the following penalties:

(a) A fine not to exceed Five Hundred Dollars ($500.00) for each violation, levied and enforced by the Public Service Commission, on complaint or on its own motion. For purposes of this article "violation" means each call placed by an automatic dialing-announcing device connected contrary to the provisions of this article.

(b) Disconnection of telephone service to the automatic dialing-announcing device for a period of time which shall be specified by the Public Service Commission.

HISTORY:

Laws, 1989, ch. 436, § 4, eff from and after July 1, 1989.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass. 95 A.L.R.3d 411.

Forum state's jurisdiction over nonresident defendant in action based on obscene or threatening telephone call from out of state. 37 A.L.R.4th 852.

Telephone calls as nuisance. 53 A.L.R.4th 1153.

Am. Jur.

74 Am. Jur. 2d, Telecommunications §§ 199-201.

§ 77-3-459. Legislative intent; retroactive effect of article.

It is the intent of the Legislature that this article shall apply to any automatic dialing-announcing devices connected to any telephone line both prior and subsequent to July 1, 1989.

HISTORY:

Laws, 1989, ch. 436, § 5, eff from and after July 1, 1989.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass. 95 A.L.R.3d 411.

Forum state's jurisdiction over nonresident defendant in action based on obscene or threatening telephone call from out of state. 37 A.L.R.4th 852.

Telephone calls as nuisance. 53 A.L.R.4th 1153.

Am. Jur.

74 Am. Jur. 2d, Telecommunications §§ 199-201.

ARTICLE 11.

DUAL PARTY RELAY SYSTEM TO PROVIDE TELECOMMUNICATIONS DEVICES FOR THE DEAF AND HEARING OR SPEECH IMPAIRED.

Sec.

77-3-501. Legislative findings.
77-3-503. Definitions; funding of agency expenses; deposit of monies into State General Fund.
77-3-505. Statewide program to provide telephone access to speech or hearing impaired persons; commission not liable for claims, actions, etc. arising out of program.
77-3-507. Maintenance surcharge on local exchange access facilities; Dual Party Relay Service Trust Fund; source of funds; use of funds; charges for use of relay service; funding of agency expenses; deposit of monies into State General Fund.
77-3-509. Advisory committee on telecommunications services for hearing or speech impaired persons; members; terms; compensation; funding of agency expenses; deposit of monies into State General Fund.
77-3-511. Commission to implement relay service within one year; report to Legislature.

§ 77-3-501. Legislative findings.

The Legislature of the State of Mississippi finds:

(a) That telephone service provides a rapid and essential communications link among the general public and with essential offices and organizations such as police, fire and medical facilities;

(b) That all persons should have basic telephone service available to them at a fair and equitable cost;

(c) That a significant portion of Mississippi's hearing and speech impaired population have profound disabilities which render normal telephone equipment useless without additional specialized devices; and

(d) That there exists a need for a program whereby access to basic telephone service for hearing and speech impaired persons is equal in cost to the amount paid by other telephone customers.

HISTORY:

Laws, 1990, ch. 321, § 1, eff from and after passage (approved March 12, 1990).

§ 77-3-503. Definitions; funding of agency expenses; deposit of monies into State General Fund.

The following terms and phrases when used in this article shall have the following meaning ascribed to them, except where the context clearly indicates a different meaning:

(a) "Deaf person" means an individual who is unable to hear and understand oral communication, with or without the assistance of amplification devices.

(b) "Dual party relay system" means a procedure whereby a deaf, hearing or speech impaired TDD user can communicate with an intermediary party, who then orally relays the first party's message or request to a third party, or vice versa.

(c) "Exchange access facility" means the access from a particular telephone subscriber's premise to the telephone system of a local exchange telephone company. Exchange access facilities include local exchange company provided access lines, private branch exchange trunks and centrex network access registers, all as defined by tariffs of telephone companies as approved by the commission.

(d) "Hard of hearing person" means an individual who has suffered a permanent hearing loss which is severe enough to necessitate the use of amplification devices to hear oral communication.

(e) "Hearing impaired person" means a person who is deaf or hard of hearing.

(f) "Ring signaling device" means a mechanism such as a flashing light which visually indicates that a communication is being received through a telephone line. This phrase also means a mechanism such as adjustable volume ringers and buzzers which audibly and loudly indicate an incoming telephone communication.

(g) "Speech impaired person" means an individual who has suffered a loss of oral communication ability which prohibits normal usage of a standard telephone handset.

(h) "Telecommunications device" or "telecommunications device for the deaf, hearing or speech impaired" or "TDD" means a keyboard mechanism attached to or in place of a standard telephone by some coupling device used to transmit or receive signals through telephone lines.

(i) "Telephone company" means every corporation, company, association, joint stock association, partnership, and person and their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any telephone line or part of a telephone line used in the conduct of the business of affording telephonic communication service for hire within this state.

(j) "Telephone line" includes conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, including radio and other advancements of the art of telephony, real estate, easements, apparatus, property and routes used and operated to facilitate the business of affording telephonic communication services to the public for hire within this state.

(k) "Trust fund" means the Dual Party Relay Service Trust Fund which is a specific trust to be created by the Public Service Commission and to be established, invested, managed and maintained for the exclusive purpose of fulfilling the provisions of this article according to Public Service Commission rules and regulations.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Laws, 1990, ch. 321, § 2; Laws, 2016, ch. 459, § 55, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

§ 77-3-505. Statewide program to provide telephone access to speech or hearing impaired persons; commission not liable for claims, actions, etc. arising out of program.

(1) The Mississippi Public Service Commission shall establish, implement, administer, regulate and promote a statewide program to provide telephone access to persons who are speech or hearing impaired.

(2) The program shall include but not be limited to:

(a) A statewide dual party relay service;

(b) The establishment of characteristics and performance standards for TDD ring signaling devices and volume control handsets;

(c) A single supplier statewide relay system to handle all intrastate TDD calls; and

(d) The promulgation of procedures, regulations, rules, guidelines and criteria to establish, implement, administer, regulate and promote all aspects of the dual party relay service and this article where not prohibited by law.

(3) The commission may use assistance from public agencies of the state and federal government or from private organizations and industry to accomplish the purposes of this article.

(4) The commission shall not be liable for any claims, actions, damages or causes of action, civil or criminal, arising out of or resulting from the establishment, participation in or operation of the dual party relay system service.

(5) The provider of the dual party relay system service, and the employees of the provider, shall not be liable for any claims, actions, damages or causes of action, civil or criminal, for:

(a) Maintaining the confidentiality of each relayed conversation;

(b) Relaying any message from one party to another in a relayed conversation; or

(c) Any error made in the transcription, transmission or transliteration of any message from one party to another in a relayed conversation, except for errors resulting from gross negligence, intentional acts or willful misconduct.

HISTORY:

Laws, 1990, ch. 321, § 3; Laws, 1991, ch. 485, § 1, eff from and after July 1, 1991.

Cross References —

Charges for use of dual party relay service, see § 77-3-507.

§ 77-3-507. Maintenance surcharge on local exchange access facilities; Dual Party Relay Service Trust Fund; source of funds; use of funds; charges for use of relay service; funding of agency expenses; deposit of monies into State General Fund.

(1) The Public Service Commission may impose upon all local exchange telephone companies operating in the State of Mississippi a monthly relay service fee in an amount to be determined by the commission based upon the amount of funding necessary to accomplish the purposes of this article and to provide dual party telephone relay services on a continuous basis. Such fees shall be paid by the local exchange companies to the credit of the Dual Party Relay Service Trust Fund. The commission may authorize local exchange companies to recover relay service fees through a surcharge on their customers in the manner prescribed by the commission. The relay service fees remitted by the local exchange companies shall not be subject to any tax, fee or assessment, nor shall it be considered revenue of the local exchange companies. The Dual Party Relay Service Trust Fund shall be credited with all interest income and earnings of the fund. The fund shall be established, invested and managed for the exclusive purpose of fulfilling the provisions of this article according to rules and regulations established by the Public Service Commission.

(2) Monies in the fund shall also include any appropriations authorized by the Legislature, any available funds authorized by the Public Service Commission, grants from other governmental or private entities, and any contributions or donations received by the Public Service Commission for the dual party relay service. All monies in the Dual Party Relay Service Trust Fund shall be used solely for the administration and operation of a statewide program to provide telecommunications access to persons who are speech and hearing impaired or similarly impaired.

(3) The users of the relay service shall be charged for telephone services, without additional charges for the use of the relay service other than any surcharge which may be imposed upon them under this section. The calling or called party shall bear an expense for making intrastate nonlocal calls considered and approved by the Public Service Commission as being equitable in comparison with non-TDD or DPR service customers.

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Laws, 1990, ch. 321, § 4; Laws, 1991, ch. 386, § 1; Laws, 1992, ch. 331, § 1; Laws, 2016, ch. 459, § 56, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Direction to establish, and definition of, Dual Party Relay Service Trust Fund, see § 77-3-503.

§ 77-3-509. Advisory committee on telecommunications services for hearing or speech impaired persons; members; terms; compensation; funding of agency expenses; deposit of monies into State General Fund.

(1) On or before August 1, 1990, the Public Service Commission shall appoint an advisory committee to monitor the statewide telecommunications relay access service and advise and make recommendations to the Public Service Commission in pursuing services which meet the needs of the hearing or speech impaired and others similarly impaired in communicating with other users of telecommunications services.

(2) The advisory committee shall be composed of:

(a) One (1) deaf person recommended by the Mississippi Association of the Deaf;

(b) One (1) speech or hearing impaired person recommended by the Mississippi Association for Retired Persons;

(c) One (1) person recommended by the Coalition of Citizens with Disabilities;

(d) One (1) representative of telecommunications utilities chosen from a list of candidates provided by the Mississippi/Alabama Telephone Association;

(e) One (1) representative of the Mississippi Speech and Hearing Association;

(f) One (1) representative of the Veterans Administration;

(g) One (1) representative from Vocational Rehabilitation Deaf Services;

(h) One (1) hearing impaired representative of the Mississippi School for the Deaf;

(i) Two (2) representatives chosen from the Public Service Commission's staff and employees;

(j) One (1) person appointed by the Speaker of the House of Representatives;

(k) One (1) person appointed by the Lieutenant Governor of the Senate;

(*l*) One (1) representative from the provider of the DPR service; and

(m) Three (3) "at-large" individuals who have particular skills, knowledge, experience or ability but who are not necessarily speech or hearing impaired or otherwise affiliated with an organization serving the speech or hearing impaired.

The commission, in its discretion, may name a successor or similar organization to be represented on the committee if an organization or agency named in this subsection ceases to exist.

(3) The committee shall be appointed based on candidate names submitted by the recommending agency or organization. Each member of the advisory committee shall serve for a term of two (2) years. A member whose term has expired shall continue to serve until a qualified replacement is appointed. The members of the advisory committee shall serve without compensation but shall be entitled to reimbursement for travel and expenses incurred in the performance of their official duties and per diem, which shall be paid out of the trust fund on the same basis established for state employees.

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Laws, 1990, ch. 321, § 5; Laws, 2000, ch. 520, § 1; Laws, 2016, ch. 459, § 57, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

§ 77-3-511. Commission to implement relay service within one year; report to Legislature.

(1) The Public Service Commission shall commit all acts necessary to implement a dual party relay service in as expeditious a manner as possible not exceeding one (1) year from March 12, 1990.

(2) The Public Service Commission shall report to the Legislature on or before January 1, 1991, the status and conditions of the dual party relay service and other aspects of the programs specified in this article.

HISTORY:

Laws, 1990, ch. 321, § 6, eff from and after passage (approved March 12, 1990).

ARTICLE 13.

UNSOLICITED RESIDENTIAL TELEPHONIC SALES CALLS.

Sec.
77-3-601. Definitions.

Sec.
77-3-603. Conduct of telephone solicitors regulated.
77-3-605. Registration of telephone solicitors with Attorney General; surety bond.
77-3-607. Requisites of enforceable contract; certain exceptions; merchant not to charge consumer's account before receipt of copy of contract.
77-3-609. Exempt parties and transactions.
77-3-611. Attorney General to investigate violations; actions for civil penalties, injunction, and other relief; stipulated penalties; waiver of penalty upon restitution, reimbursement or payment of damages.
77-3-613. Burden of proving exemption or exemption from definition.
77-3-615. Attorney's fees; costs.
77-3-617. Telecommunications companies to inform customers of provisions of law.
77-3-619. Attorney General may issue rules and regulations to carry out provisions of law.

§ 77-3-601. Definitions.

As used in this article:

(a) "Telephonic sales call" means a call made by a telephone solicitor to a consumer for the purpose of soliciting a sale of any consumer goods or services, or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information or an extension of credit for these purposes.

(b) "Consumer goods or services" means any real property or any tangible or intangible personal property which is normally used for personal, family or household purposes, including, without limitation, any property intended to be attached to or installed in any real property regardless of whether it is attached or installed, as well as cemetery lots and time-share estates, and any services related to the property.

(c) "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

(i) In response to an express request of the person called;

(ii) In connection with an existing debt or contract, payment or performance which has not been completed at the time of the call; or

(iii) To any person with whom the telephone solicitor has an established business relationship.

(d) "Consumer" means an actual or prospective purchaser, lessee or recipient of consumer goods or services.

(e) "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services.

(f) "Telephone solicitor" means any natural person, firm, organization, partnership, association, corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call.

(g) "Doing business in this state" refers to businesses who conduct telephonic sales calls from a location in Mississippi or from other states or nations to consumers located in Mississippi.

(h) "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a consumer with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by such person or entity, which relationship has not been previously terminated by either party.

HISTORY:
Laws, 1993, ch. 538, § 1, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of state statute or law pertaining to telephone solicitation. 44 A.L.R.5th 619.

§ 77-3-603. Conduct of telephone solicitors regulated.

Any telephone solicitor who makes an unsolicited telephonic sales call to a residential telephone number shall:

(a) Make calls between the hours of 8:00 a.m. and 9:00 p.m., Central Standard Time, Monday through Friday, and between the hours of 8:00 a.m. and 9:00 p.m. on Saturdays (no calls shall be made on Sundays);

(b) Identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation; and

(c) Discontinue the call immediately if at any time during the conversation the person being solicited expresses disinterest in continuing the call or sales presentation.

HISTORY:
Laws, 1993, ch. 538, § 2, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of state statute or law pertaining to telephone solicitation. 44 A.L.R.5th 619.

§ 77-3-605. Registration of telephone solicitors with Attorney General; surety bond.

Any telephone solicitor shall apply for a certificate of registration from the Office of the Attorney General as a condition for doing business in this state. The certificate of registration shall be in a form as prescribed by the Attorney General.

The application for a certificate of registration shall be accompanied by a surety bond in the penal sum of Seventy-five Thousand Dollars ($75,000.00) with conditions and in a form prescribed by the Attorney General. The bond shall provide for the indemnification of any person suffering loss as the result of any fraud, misrepresentation or violation of Sections 77-3-601 through 77-3-619 by the principal. The term of the bond shall be continuous, but it shall be subject to cancellation by the surety in the manner described in this section. The surety may terminate the bond upon giving a sixty-day written notice to the principal and to the Attorney General, but the liability of the surety for acts of the principal and its agents shall continue during the sixty (60) days of cancellation notice. The notice does not absolve the surety from liability which accrues before the cancellation becomes final but which is discovered after that date and which may have arisen at any time during the term of the bond. Unless the bond is replaced by that of another surety before the expiration of the sixty (60) days' notice of cancellation, the certificate of registration shall be suspended. Any person required pursuant to this section to file a bond with an application for a certificate of registration may file, in lieu thereof, cash, a certificate of deposit, or government bonds in the amount of Seventy-five Thousand Dollars ($75,000.00). Such deposit is subject to the same terms and conditions as are provided for in the surety bond required herein. Any interest or earnings on such deposits are payable to the depositor.

HISTORY:

Laws, 1993, ch. 538, § 3, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state statute or law pertaining to telephone solicitation. 44 A.L.R.5th 619.

§ 77-3-607. Requisites of enforceable contract; certain exceptions; merchant not to charge consumer's account before receipt of copy of contract.

(1) A contract made pursuant to a telephonic sales call is not valid and enforceable against a consumer unless made in compliance with this section.

(2) A contract made pursuant to a telephonic sales call shall:

(a) Be reduced to writing and signed by the consumer.

(b) Comply with all other applicable laws and rules.

(c) Match the description of goods or services as principally used in the telephone solicitations.

(d) Contain the name, address, and telephone number of the seller, the total price of the contract and a detailed description of the goods or services being sold.

(e) Contain, in bold, conspicuous type, immediately preceding the signature, the following statement:

"YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN THIS CONTRACT AND RETURN IT TO THE SELLER."

(f) Include in its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

(3) The provisions of this section do not apply to contractual sales regulated under other sections of the Mississippi statutes and to contractual sales of companies which provide telecommunication services and reach binding agreements by telephone for these services.

(4) A merchant who engages a telephone solicitor to make or cause to be

made a telephonic sales call shall not make or submit any charge to the consumer's credit card account until after the merchant receives from the consumer a copy of the contract which complies with this section.

(5) The provisions of this section do not apply to a transaction:

(a) Made in accordance with prior negotiations in the course of a visit by the consumer to a merchant operating a retail business establishment which has a fixed permanent location and where consumer goods are displayed or offered for sale on a continuing basis;

(b) In which the consumer may obtain a full refund for the return of undamaged and unused goods or a cancellation of services notice to the seller within seven (7) days after receipt by the consumer, and the seller will process the refund within thirty (30) days after receipt of the returned merchandise by the consumer;

(c) In which the consumer purchases goods or services after an examination of a television, radio, or print advertisement or a sample, brochure, or catalog of the merchant that contains the name, address and telephone number of the merchant; a description of the goods or services being sold; and any limitations or restrictions that apply to the offer; or

(d) In which the merchant is a bona fide charitable organization ruled tax-exempt by the Internal Revenue Service.

HISTORY:
Laws, 1993, ch. 538, § 4, eff from and after July 1, 1993.

Federal Aspects—
Charitable organizations ruled tax-exempt by Internal Revenue Service, see 26 USCS § 501.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of state statute or law pertaining to telephone solicitation. 44 A.L.R.5th 619.

§ 77-3-609. Exempt parties and transactions.

The provisions of Sections 77-3-601 through 77-3-619 shall not apply to:

(a) A person engaging in commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature.

(b) A person making calls for religious, charitable, political, education or other noncommercial purposes, or a person soliciting for a nonprofit corporation if that corporation is properly registered as such with the Secretary of State and is included within the exemption of Section 501(c)(3) or Section 501(c)(6) of the Internal Revenue Code.

(c) A person soliciting:

(i) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation;

(ii) Who does not make the major sales presentation during the telephone solicitation; or

(iii) Without the intent to complete, and who does not complete, the sales presentation during the telephone solicitation, but who completes the sales presentation at a later face-to-face meeting between the seller and the prospective purchaser. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

(d) Any licensed securities, commodities, or investments broker, dealer or investment advisor, when soliciting within the scope of his license. As used in this section, "licensed securities, commodities, or investments broker, dealer or investment advisor" means a person subject to license or registration as such by the Securities and Exchange Commission, by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Sec. 781), or by an official or agency of this state or of any state of the United States.

(e) Any licensed associated person of a securities, commodities, or investments broker, dealer or investment advisor, when soliciting within the scope of his license. As used in this section, "licensed associated person of a securities, commodities, or investment broker, dealer or investment advisor" means any associated person registered or licensed by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Sec. 781) or by an official or agency of this state or of any state of the United States.

(f) A person primarily soliciting the sale of a newspaper, magazine or periodical of general circulation by its publisher, or by the publisher's agent through written agreement.

(g) A book, video or record club or contractual plan or arrangement:

(i) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise;

(ii) Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce"; or

(iii) Which provides for the sale of books, records or videos which are not covered under paragraphs (i) or (ii), including continuity plans, subscription arrangements, standing order arrangements, supplements and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

(h) Any supervised financial institution or parent, subsidiary or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender or insurer, provided that the institution is subject to supervision by an official or agency of this state, of any state or of the United States.

(i) Any licensed insurance or real estate broker, agent, customer representative or solicitor when soliciting within the scope of his license. As used in this section, "licensed insurance or real estate broker, agent, customer representative or solicitor" means any insurance or real estate broker, agent, customer representative or solicitor licensed by an official or agency of this state or of any state of the United States.

(j) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit.

(k) A person who solicits sales by periodically publishing and delivering a catalog of the seller's merchandise to prospective purchasers, if the catalog:

(i) Contains a written description or illustration of each item offered for sale;

(ii) Includes the business address or home office address of the seller;

(iii) Includes at least twenty-four (24) pages of written material and illustrations and is distributed in more than one (1) state; or

(iv) Has an annual circulation by mailing of not less than two hundred fifty thousand (250,000).

(*l*) A person who solicits contracts for the maintenance or repair of goods previously purchased from the person making the solicitation or on whose behalf the solicitation is made.

(m) A telephone company, or its subsidiary or agents, or a business which is regulated by the Mississippi Public Service Commission, or a Federal Communications Commission licensed cellular telephone company or other bona fide radio telecommunication services provider.

(n) Any publicly traded corporation which has securities registered with the Securities and Exchange Commission which are a reported security within the meaning of subparagraph (4) of Regulation Section 240.11a3-1,(a), under the Securities Exchange Act of 1934, or which is exempt from registration under subparagraph (A), (B), (C), (E), (F), (G) or (H) of paragraph (2) of subsection (g) of Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. Section 781), or any subsidiary of such a corporation.

(o) A business soliciting exclusively the sale of telephone answering services, provided that the telephone answering services will be supplied by the solicitor.

(p) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.) and the registration or license has not expired or been suspended or revoked.

(q) A person soliciting the sale of food or produce if the solicitation neither intends to result in, or actually results in, a sale which costs the purchaser in excess of One Hundred Dollars ($100.00).

(r) A person soliciting business from prospective consumers who have an established business relationship with, or who have previously purchased from, the business enterprise for which the solicitor is calling, if the solicitor is operating under the same exact business name.

(s) A person who has been operating, for at least one (1) year, a retail business establishment under the same name as that used in connection with telemarketing, and both of the following occur on a continuing basis:

(i) Either products are displayed and offered for sale, or services are offered for sale and provided at the business establishment; and

(ii) A majority of the seller's business involves the buyer obtaining such products or services at the seller's location.

(t) Any telephone marketing service company which provides telemarketing sales services under contract to sellers and has been operating continuously for at least five (5) years under the same business name and seventy-five percent (75%) of its contracts are performed on behalf of persons exempted from Sections 77-3-601 through 77-3-619.

HISTORY:

Laws, 1993, ch. 538, § 5, eff from and after July 1, 1993.

Federal Aspects—

Tax-exempt charitable organizations under Internal Revenue Service, see 26 USCS § 501.

§ 77-3-611. Attorney General to investigate violations; actions for civil penalties, injunction, and other relief; stipulated penalties; waiver of penalty upon restitution, reimbursement or payment of damages.

The Attorney General shall investigate any complaints received concerning violations of Sections 77-3-601 through 77-3-619. If, after investigating any complaint, the Attorney General finds that there has been a violation of Sections 77-3-601 through 77-3-619, the Attorney General may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall not exceed Ten Thousand Dollars ($10,000.00) per violation and shall be deposited in the State General Fund, unallocated. This civil penalty may be recovered in any action brought under Sections 77-3-601 through 77-3-619 by the Attorney General. Alternatively, the Attorney General may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The Attorney General or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

HISTORY:

Laws, 1993, ch. 538, § 6, eff from and after July 1, 1993.

§ 77-3-613. Burden of proving exemption or exemption from definition.

In any civil proceeding alleging a violation of Sections 77-3-601 through 77-3-619, the burden of proving an exemption or an exemption from a definition is upon the person claiming it.

HISTORY:
Laws, 1993, ch. 538, § 7, eff from and after July 1, 1993.

§ 77-3-615. Attorney's fees; costs.

(1) In any civil litigation resulting from a transaction involving a violation of Sections 77-3-601 through 77-3-619, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his reasonable attorney's fees and costs from the nonprevailing party.

(2) The attorney for the prevailing party shall submit a sworn affidavit of his time spent on the case and his costs incurred for all the motions, hearings, and appeals to the trial judge who presided over the civil case.

(3) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(4) Any award of attorney's fees or costs shall become a part of the judgment and subject to execution as the law allows.

(5) In any civil litigation initiated by the Attorney General, the court may award to the prevailing party reasonable attorney's fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party, or if the court finds bad faith on the part of the losing party.

HISTORY:
Laws, 1993, ch. 538, § 8, eff from and after July 1, 1993.

§ 77-3-617. Telecommunications companies to inform customers of provisions of law.

The Attorney General shall by rule ensure that telecommunications companies inform their customers of the provisions of Sections 77-3-601 through 77-3-619. The notification may be made by:

(a) Annual inserts in the billing statements mailed to customers; and

(b) Conspicuous publication of the notice in the consumer information pages of the local telephone directories.

HISTORY:
Laws, 1993, ch. 538, § 9, eff from and after July 1, 1993.

§ 77-3-619. Attorney General may issue rules and regulations to carry out provisions of law.

The Attorney General is authorized to issue any necessary rules and regulations in order to carry out the provisions of Sections 77-3-601 through 77-3-619.

HISTORY:

Laws, 1993, ch. 538, § 10, eff from and after July 1, 1993.

ARTICLE 15.

MISSISSIPPI TELEPHONE SOLICITATION ACT.

Sec.
77-3-701. Short title [Repealed effective July 1, 2021].
77-3-703. Legislative findings [Repealed effective July 1, 2021].
77-3-705. Definitions [Repealed effective July 1, 2021].
77-3-707. Use of the "no-calls" database by telephone solicitors mandatory [Repealed effective July 1, 2021].
77-3-709. Commission's discretion to exempt some telephone solicitors from purchase and use of no-calls database [Repealed effective July 1, 2021].
77-3-711. Exempt categories [Repealed effective July 1, 2021].
77-3-713. Registration of telephone solicitors mandatory [Repealed effective July 1, 2021].
77-3-715. Regulatory powers of Public Service Commission [Repealed effective July 1, 2021].
77-3-717. Inclusion in no-calls database of Mississippi part of any Federal Trade Commission national database [Repealed effective July 1, 2021].
77-3-719. Nondisclosure of database [Repealed effective July 1, 2021].
77-3-721. Fees; funding of expenses of agency; deposit of user charges and fees authorized under this section into State General Fund [Repealed effective July 1, 2020; Repealed effective July 1, 2021; see Editor's Note].
77-3-723. Rules for authorized calls [Repealed effective July 1, 2021].
77-3-725. Violations; hearings; penalties [Repealed effective July 1, 2021].
77-3-727. Consumer complaints [Repealed effective July 1, 2021].
77-3-729. Defenses [Repealed effective July 1, 2021].
77-3-731. Commission granted personal jurisdiction over resident and nonresident telephone solicitors [Repealed effective July 1, 2021].
77-3-733. Right of appeal [Repealed effective July 1, 2021].
77-3-735. Service providers certificated by commission not liable for violations of others [Repealed effective July 1, 2021].
77-3-737. Repeal of §§ 77-3-701 through 77-3-737.

§ 77-3-701. Short title [Repealed effective July 1, 2021].

This article shall be known and may be cited as the "Mississippi Telephone Solicitation Act."

HISTORY:

Laws, 2003, ch. 478, § 1; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 1; reenacted without change, Laws, 2006, ch. 367, § 1; reenacted without change, Laws, 2010, ch. 324, § 1; reenacted without change, Laws, 2013, ch. 322, § 1; reenacted without change, Laws, 2017, ch. 312, § 1, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Laws of 2003, ch. 478, § 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, phrase or any part of this article shall be held invalid or unconstitutional, such holding shall not affect any other section, paragraph, sentence, clause, phrase or part of this article which is not in and of itself invalid or unconstitutional. Moreover, if the application of this article, or any portion of it, to any person or circumstance is held invalid, the invalidity shall not affect the application of this article to other persons or circumstances which can be given effect without the invalid provision or application."

Laws of 2003, ch. 478, § 21, provides as follows:

"SECTION 21. The provisions of Sections 77-3-701 through 77-3-737 shall supersede any other act or provision of law to the contrary, and they shall be codified as a new article within Chapter 3, Title 77, Mississippi Code of 1972."

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-703. Legislative findings [Repealed effective July 1, 2021].

(1) The use of the telephone to make all types of solicitations to consumers is pervasive. This article gives consumers a tool by which to object to telemarketing calls and text messages, as these communications can amount to a nuisance, an invasion of privacy, and can create a health and safety risk for certain consumers who maintain their phone service primarily for emergency medical situations.

(2) Any calls made for political purposes shall be governed by Section 23-15-875.

HISTORY:

Laws, 2003, ch. 478, § 2; reenacted and amended, Laws, 2005, 2nd Ex Sess, ch. 62, § 2; reenacted without change, Laws, 2006, ch. 367, § 2; reenacted without change, Laws, 2010, ch. 324, § 2; reenacted without change, Laws, 2013, ch. 322, § 2; Laws, 2016, ch. 322, § 1; reenacted without change, Laws, 2017, ch. 312, § 2, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-705. Definitions [Repealed effective July 1, 2021].

For the purposes of this article, the following words and terms shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Consumer" means an actual or prospective purchaser, lessee or recipient of consumer goods or services.

(b) "Caller identification service" means a type of telephone service which permits a telephone subscriber to view the telephone number and name of the person or entity making an incoming telephone call or text message.

(c) "Telephone solicitor" means any person, firm, entity, organization, partnership, association, corporation, charitable entity, or a subsidiary or affiliate thereof, who engages in any type of telephone solicitation on his or her own behalf or through representatives, independent contractors, salespersons, agents, automated dialing systems, text messaging systems, or any other machines or other individuals or systems.

(d) "Telephone solicitation" means any voice communication over the telephone line of a consumer for the purpose of:

(i) Encouraging the purchase or rental of, or investment in, property; or

(ii) Soliciting a sale of any consumer goods or services, or an extension of credit for consumer goods or services.

(e) "Commission" means the Mississippi Public Service Commission.

(f) "Doing business in this state" refers to businesses which conduct telephone solicitations from any location to consumers located in this state.

(g) "Consumer goods or services" means any real property or any tangible or intangible personal property which is normally used for personal, family or household purposes, including, without limitation, any property intended to be attached to, or installed in, any real property, and any services related to the property.

(h) "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a consumer, with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the consumer, which relationship is currently existing or was terminated within six (6) months of the telephone solicitation; however, the act of purchasing consumer goods or services under an extension of credit does not create an existing business relationship between the consumer and the entity extending credit to the consumer for such purchase. The term does not include the situation wherein the consumer has merely been subject to a telephone solicitation by or at the behest of the telephone solicitor within the six (6) months immediately preceding the contemplated telephone solicitation.

(i) "Charitable organization" means any person or entity holding itself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental or conservation, civic or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters, or any other persons who protect the public safety, or for any other purpose where a charitable appeal is the basis of the solicitation.

HISTORY:

Laws, 2003, ch. 478, § 3; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 3; reenacted without change, Laws, 2006, ch. 367, § 3; reenacted without change, Laws, 2010, ch. 324, § 3; reenacted without change, Laws, 2013, ch. 322, § 3; Laws, 2016, ch. 322, § 2; reenacted without change, Laws, 2017, ch. 312, § 3, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-707. Use of the "no-calls" database by telephone solicitors mandatory [Repealed effective July 1, 2021].

(1) Except as otherwise provided pursuant to Section 77-3-709 or 77-3-711, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state unless the telephone solicitor has purchased the "no-calls" database from the commission or the entity under contract with the commission.

(2) Except as otherwise provided pursuant to Section 77-3-709 or 77-3-711, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state who has given notice to the

commission, or the entity under contract with the commission, of his or her objection to receiving telephone solicitations.

(3) The commission, or an entity under contract with the commission, shall establish and operate a "no-calls" database composed of a list of telephone numbers of consumers who have given notice of their objection to receiving telephone solicitations. The "no-calls" database may be operated by the commission or by another entity under contract with the commission.

(4) Each local exchange company and each competing local exchange carrier shall provide written notification on a semiannual basis to each of its consumers of the opportunity to provide notification to the commission or the entity under contract with the commission, that the consumer objects to receiving telephone solicitations. The notification must be disseminated at the option of the carrier, by television, radio or newspaper advertisements, written correspondence, bill inserts or messages, a publication in the consumer information pages of the local telephone directory, or any other method not expressly prohibited by the commission.

HISTORY:

Laws, 2003, ch. 478, § 4; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 4; reenacted without change, Laws, 2006, ch. 367, § 4; reenacted without change, Laws, 2010, ch. 324, § 4; reenacted without change, Laws, 2013, ch. 322, § 4; reenacted without change, Laws, 2017, ch. 312, § 4, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-709. Commission's discretion to exempt some telephone solicitors from purchase and use of no-calls database [Repealed effective July 1, 2021].

The commission, in its discretion, may allow telephone solicitors to make telephone solicitations without requiring them to purchase the "no-calls" database, and regardless of whether a telephone solicitation may be made to a consumer who has given notice of his objection to receiving such solicitations, provided that it adopts a written policy incorporating the following criteria:

(a) The telephone solicitor must demonstrate to the commission that its proposed telephone solicitation is reasonably related to an established business relationship as defined in Section 77-3-705(h), or is being made in response to an invitation or notice from a consumer which clearly signifies that he is open to a contact being initiated;

(b) The telephone solicitation is to be made by a person or entity for the purpose of soliciting a contribution or donation to a bona fide nonprofit corporation, regardless of whether consumer goods or services will be provided to the consumer in return for the contribution or donation; or

(c) The consumer will not be telephoned for a telephone solicitation as defined in Section 77-3-705(d), but he will be telephoned for a bona fide religious or charitable purpose, including an invitation to attend an event or a request for a contribution or donation.

In all cases, the telephone solicitor must demonstrate that it will not use an automated dialing system or a method that will block or otherwise circumvent the consumer's use of a caller identification service.

In making its determination of whether to allow a telephone solicitation to be made under the policy which will include the limitations set forth in this section, the commission shall exercise due care in investigating previous conduct of the telephone solicitor seeking such authority. The commission may deny any telephone solicitor the privilege of making telephone solicitations under this section, notwithstanding that any of the criteria set forth in this section have been met.

HISTORY:

Laws, 2003, ch. 478, § 5; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 5; reenacted without change, Laws, 2006, ch. 367, § 5; reenacted without change, Laws, 2010, ch. 324, § 5; reenacted without change, Laws, 2013, ch. 322, § 5; reenacted without change, Laws, 2017, ch. 312, § 5, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-711. Exempt categories [Repealed effective July 1, 2021].

The provisions of this article shall not apply to:

(a) A person soliciting:

(i) Who does not make the major sales presentation during the telephone solicitation;

(ii) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; or

(iii) Without the intent to complete, and who does not complete, the sales presentation during the telephone solicitation, but who completes the sales presentation at a later face-to-face meeting between the person soliciting and the prospective purchaser or consumer.

(b) A person who is a licensee under Chapter 35, Title 73, Mississippi Code of 1972, who is a resident of the State of Mississippi, and whose telephone solicitation is for the sole purpose of selling, exchanging, purchasing, renting, listing for sale or rent or leasing real estate in connection with his real estate license and not in conjunction with any other offer.

(c) A motor vehicle dealer as that term is defined in Section 63-17-55, who is a resident of the State of Mississippi and who maintains a current motor vehicle dealer's license issued by the Mississippi Motor Vehicle Commission, whose telephone solicitation is for the sole purpose of selling, offering to sell, soliciting or advertising the sale of motor vehicles in connection with his motor vehicle dealer's license and not in conjunction with any other offer.

(d) An agent as that term is defined in Section 83-17-1 whose telephone solicitation is for the sole purpose of soliciting, consulting, advising, or adjusting in the business of insurance.

(e) A broker-dealer, agent, or investment advisor registered under

Chapter 71, Title 75, Mississippi Code of 1972, whose telephone solicitation is for the sole purpose of effecting or attempting to effect the purchase or sale of securities or has the purpose of providing or seeking to provide investment or financial advice.

(f) A person calling on behalf of a charitable organization which is registered under Chapter 11, Title 79, Mississippi Code of 1972, whose telephone solicitation is for the sole purpose of soliciting for the charitable organization and who receives no compensation for his activities on behalf of the organization.

(g) A person calling on behalf of a newspaper of general circulation, whose telephone solicitation is for the sole purpose of soliciting a subscription to the newspaper from, or soliciting the purchase of advertising by, the consumer.

(h) A person calling on behalf of any supervised financial institution or parent, subsidiary or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, small loan company, consumer finance lender, commercial finance lender or insurer, provided that the institution has a physical office located in the State of Mississippi and is subject to supervision by an official or agency of the State of Mississippi or of the United States.

(i) A person calling on behalf of a funeral establishment licensed under Section 73-11-41, cemetery or monument dealer, if the sole purpose of the telephone solicitation relates to services provided by the funeral or death related establishments in the course of its ordinary business.

(j) Any telephone solicitor who solicits a consumer with whom he has an established business relationship.

HISTORY:

Laws, 2003, ch. 478, § 6; reenacted and amended, Laws, 2005, 2nd Ex Sess, ch. 62, § 6; reenacted without change, Laws, 2006, ch. 367, § 6; reenacted without change, Laws, 2010, ch. 324, § 6; reenacted without change, Laws, 2013, ch. 322, § 6; reenacted without change, Laws, 2017, ch. 312, § 6, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-713. Registration of telephone solicitors mandatory [Repealed effective July 1, 2021].

All telephone solicitors must register with the commission before conducting any telephone solicitations in the State of Mississippi.

HISTORY:

Laws, 2003, ch. 478, § 7; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 7; reenacted without change, Laws, 2006, ch. 367, § 7; reenacted without change, Laws, 2010, ch. 324, § 7; reenacted without change, Laws, 2013, ch. 322, § 7; reenacted without change, Laws, 2017, ch. 312, § 7, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-715. Regulatory powers of Public Service Commission [Repealed effective July 1, 2021].

The commission may promulgate rules and regulations necessary to effectuate this article, including, but not limited to, the following:

(a) The methods by which consumers may give notice to the commission or its contractor of their objection to receive solicitations or revocation of the notice;

(b) The methods by which a notice of objection becomes effective and the effect of a change of telephone number on the notice;

(c) The methods by which objections and revocations are collected and added to the database;

(d) The methods by which a person or entity desiring to make telephone solicitations may obtain access to the database as required to avoid calling the telephone number of consumers included in the database;

(e) The process by which the database is updated, and the frequency of updates;

(f) The process by which telephone solicitors must register with the commission for the purpose of conducting telephonic solicitations in the state;

(g) The establishment of fees to be charged by the commission or its contractor to telephone solicitors for access to or for paper or electronic copies of the database on an annual basis;

(h) The establishment of a written policy which clearly articulates the circumstances under which the commission, in its discretion, may allow exceptions to the provisions of this article pursuant to Section 77-3-703; and

(i) All other matters relating to the database that the commission deems necessary.

HISTORY:

Laws, 2003, ch. 478, § 8; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 8; reenacted without change, Laws, 2006, ch. 367, § 8; reenacted without change, Laws, 2010, ch. 324, § 8; reenacted without change, Laws, 2013, ch. 322, § 8; reenacted without change, Laws, 2017, ch. 312, § 8, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-717. Inclusion in no-calls database of Mississippi part of any Federal Trade Commission national database [Repealed effective July 1, 2021].

If the Federal Trade Commission establishes a single national database of telephone numbers of consumers who object to receiving telephone solicitations, the commission must include the portion of the single national database that relates to the State of Mississippi in the database established under this article. Likewise, the commission shall make available the state's database to the Federal Trade Commission for inclusion in the national database.

HISTORY:

Laws, 2003, ch. 478, § 9; reenacted and amended, Laws, 2005, 2nd Ex Sess, ch. 62, § 9; reenacted without change, Laws, 2006, ch. 367, § 9; reenacted without change, Laws, 2010, ch. 324, § 9; reenacted without change, Laws, 2013, ch. 322, § 9; reenacted without change, Laws, 2017, ch. 312, § 9, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-719. Nondisclosure of database [Repealed effective July 1, 2021].

Information contained in the database established under this article may be used and accessed only for the purpose of compliance with this article and shall not be otherwise subject to public inspection or disclosure.

HISTORY:

Laws, 2003, ch. 478, § 10; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 10; reenacted without change, Laws, 2006, ch. 367, § 10; reenacted without change, Laws, 2010, ch. 324, § 10; reenacted without change, Laws, 2013, ch. 322, § 10; reenacted without change, Laws, 2017, ch. 312, § 10, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-721. Fees; funding of expenses of agency; deposit of user charges and fees authorized under this section into State General Fund [Repealed effective July 1, 2020; Repealed effective July 1, 2021; see Editor's Note].

All fees collected under the provisions of this article shall be deposited into a special fund which is created in the State Treasury to be expended by the commission for the implementation and administration of this article. From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

This section shall stand repealed July 1, 2020.

HISTORY:

Laws, 2003, ch. 478, § 11; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 11; reenacted without change, Laws, 2006, ch. 367, § 11; reenacted without change, Laws, 2010, ch. 324, § 11; reenacted without change, Laws, 2013, ch. 322, § 11; reenacted without change, Laws, 2017, ch. 312, § 11; Laws, 2017, 1st Ex Sess, ch. 7, § 39, eff from and after passage (approved June 23, 2017).

Editor's Notes —

For repeal of this section, see § 77-3-737.

This section was amended by § 39 of Chapter 7, Laws of 2017, 1st Extraordinary Session, effective June 23, 2017, which added the last paragraph repealing the section effective July 1, 2020. The section is also included within the span of sections repealed by § 77-3-737, which was amended by § 19 of Chapter 312, Laws of 2017, effective July 1, 2017, to extend the date of the repealer to July 1, 2021. This section is subject to both repealers.

Amendment Notes —

The first 2017 amendment (ch. 312), reenacted the section without change.

The second 2017 amendment (ch. 7, 1st Ex Sess), effective June 23, 2017, in the first paragraph, deleted the former last two sentences, which read: "At the end of each fiscal year, earned interest and unexpended monies remaining in the fund may not revert to any other fund of the state, but shall remain available for appropriations to administer this article. The Legislature shall appropriate annually from the fund the amount necessary for the administration of this article to the commission" and added the current last sentence; and added the last paragraph.

§ 77-3-723. Rules for authorized calls [Repealed effective July 1, 2021].

(1) Any person or entity who makes an authorized telephone solicitation to a consumer in this state shall announce clearly, at the beginning of each call, his or her name, the company he or she represents and the purpose of the call. Such calls may only be made between the hours of 8:00 a.m. and 8:00 p.m. Central Standard Time. No telephone solicitations may be made on a Sunday. For purposes of this provision, an "authorized telephone solicitation" means a solicitation that is made: (a) to a consumer who is not listed on the most current "no-calls" database; (b) by a telephone solicitor who has been authorized to make such solicitations under the provisions of Section 77-3-709; or (c) by a telephone solicitor who is exempt from this article under the provisions of Section 77-3-711.

(2) A person or entity who makes a telephone solicitation to a consumer in this state may not utilize knowingly any method that blocks or otherwise circumvents the consumer's use of a caller identification service, nor may the person or entity use an automated dialing system or any like system that uses a recorded voice message to communicate with the consumer unless the person or entity has an established business relationship with the consumer and uses the recorded voice message to inform the consumer about a new product or service.

HISTORY:

Laws, 2003, ch. 478, § 12; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 12; reenacted without change, Laws, 2006, ch. 367, § 12; reenacted without change, Laws, 2010, ch. 324, § 12; reenacted without change, Laws, 2013, ch. 322, § 12; reenacted without change, Laws, 2017, ch. 312, § 12, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-725. Violations; hearings; penalties [Repealed effective July 1, 2021].

The commission may investigate alleged violations and initiate proceedings relative to a violation of this article or any rules and regulations promulgated pursuant to this article. Such proceedings include, without limitation, proceedings to issue a cease and desist order, and to issue an order imposing a civil penalty not to exceed Five Thousand Dollars ($5,000.00) for each violation. The commission shall afford an opportunity for a fair hearing to the alleged violator(s) after giving written notice of the time and place for said hearing. Failure to appear at any such hearing may result in the commission finding the alleged violator(s) liable by default. Any telephone solicitor found to have violated this article, pursuant to a hearing or by default, may be subject to a civil penalty not to exceed Five Thousand Dollars ($5,000.00) for each violation to be assessed and collected by the commission. Each telephonic communication shall constitute a separate violation.

All penalties collected by the commission shall be deposited in the special fund created under Section 77-3-721 for the administration of this article.

The commission may issue subpoenas, require the production of relevant documents, administer oaths, conduct hearings, and do all things necessary in the course of investigating, determining and adjudicating an alleged violation.

The remedies, duties, prohibitions and penalties set forth under this article shall not be exclusive and shall be in addition to all other causes of action, remedies and penalties provided by law, including, but not limited to, the penalties provided by Section 77-1-53.

HISTORY:

Laws, 2003, ch. 478, § 13; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 13; reenacted without change, Laws, 2006, ch. 367, § 13; reenacted without change, Laws, 2010, ch. 324, § 13; reenacted without change, Laws, 2013, ch. 322, § 13; reenacted without change, Laws, 2017, ch. 312, § 13, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-727. Consumer complaints [Repealed effective July 1, 2021].

Any person who has received a telephone solicitation in violation of this article, or any rules and regulations promulgated pursuant to this article, may file a complaint with the commission. The complaint will be processed pursuant to complaint procedures established by the commission.

HISTORY:

Laws, 2003, ch. 478, § 14; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 14; reenacted without change, Laws, 2006, ch. 367, § 14; reenacted without change, Laws, 2010, ch. 324, § 14; reenacted without change, Laws, 2013, ch. 322, § 14; reenacted without change, Laws, 2017, ch. 312, § 14, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-729. Defenses [Repealed effective July 1, 2021].

It shall be a defense in any action or proceeding brought under Section 77-3-725 or 77-3-727 that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this article.

HISTORY:

Laws, 2003, ch. 478, § 15; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 15; reenacted without change, Laws, 2006, ch. 367, § 15; reenacted without change, Laws, 2010, ch. 324, § 15; reenacted without change, Laws, 2013, ch. 322, § 15; reenacted without change, Laws, 2017, ch. 312, § 15, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-731. Commission granted personal jurisdiction over resident and nonresident telephone solicitors [Repealed effective July 1, 2021].

The commission is granted personal jurisdiction over any telephone solicitor, whether a resident or a nonresident, notwithstanding that telephone solicitors are not deemed to be a public utility, for the purpose of administering this article. The commission is granted personal jurisdiction over any nonresident telephone solicitor, its executor, administrator, receiver, trustee or any other appointed representative of such nonresident as to an action or proceeding authorized by this article or any rules and regulations promulgated pursuant to this article as authorized by Section 13-3-57, and also upon any nonresident, his or her executor, administrator, receiver, trustee or any other appointed representative of such nonresident who has qualified under the laws of this state to do business herein. Service of summons and process upon the alleged violator of this article shall be had or made as is provided by the Mississippi Rules of Civil Procedure.

HISTORY:

Laws, 2003, ch. 478, § 16; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 16; reenacted without change, Laws, 2006, ch. 367, § 16; reenacted without change, Laws, 2010, ch. 324, § 16; reenacted without change, Laws, 2013, ch. 322, § 16; reenacted without change, Laws, 2017, ch. 312, § 16, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-733. Right of appeal [Repealed effective July 1, 2021].

Any party aggrieved by any final order of the commission pursuant to this article, or any rules and regulations promulgated pursuant to this article, shall have the right of appeal to the Chancery Court of Hinds County, Mississippi, First Judicial District.

HISTORY:

Laws, 2003, ch. 478, § 17; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 17; reenacted without change, Laws, 2006, ch. 367, § 17; reenacted without change, Laws, 2010, ch. 324, § 17; reenacted without change, Laws, 2013, ch. 322, § 17; reenacted without change, Laws, 2017, ch. 312, § 17, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-735. Service providers certificated by commission not liable for violations of others [Repealed effective July 1, 2021].

No provider of telephonic caller identification service, local exchange telephone company or long distance company certificated by the commission may be held liable for violations of this article committed by other persons or entities.

HISTORY:

Laws, 2003, ch. 478, § 18; reenacted without change, Laws, 2005, 2nd Ex Sess, ch. 62, § 18; reenacted without change, Laws, 2006, ch. 367, § 18; reenacted without change, Laws, 2010, ch. 324, § 18; reenacted without change, Laws, 2013, ch. 322, § 18; reenacted without change, Laws, 2017, ch. 312, § 18, eff from and after July 1, 2017.

Editor's Notes —

For repeal of this section, see § 77-3-737.

Amendment Notes —

The 2017 amendment reenacted the section without change.

§ 77-3-737. Repeal of §§ 77-3-701 through 77-3-737.

Sections 77-3-701 through 77-3-737 shall stand repealed from and after July 1, 2021.

HISTORY:

Laws, 2003, ch. 478, § 19; Laws, 2005, 2nd Ex Sess, ch. 62, § 19; reenacted without change, Laws, 2006, ch. 367, § 19; Laws, 2010, ch. 324, § 19; Laws, 2013, ch. 322, § 19; reenacted and amended, Laws, 2017, ch. 312, § 19, eff from and after July 1, 2017.

Amendment Notes —

The 2017 amendment reenacted and amended the section to extend the date of the repealer for §§ 77-3-701 through 77-3-737 by substituting "July 1, 2021" for "July 1, 2017."

ARTICLE 17.

CALLER ID ANTI-SPOOFING ACT.

Sec.

77-3-801. Short title.
77-3-803. Definitions.
77-3-805. Prohibition against entering false information into telephone caller identification system or placing call knowing false information was entered into telephone caller identification system.
77-3-807. Exceptions.
77-3-809. Penalties.

§ 77-3-801. Short title.

This article may be cited as the "Caller ID Anti-Spoofing Act."

HISTORY:

Laws, 2010, ch. 326, § 1, eff from and after July 1, 2010.

JUDICIAL DECISIONS

ANALYSIS

1-2. [Reserved for future use.]
3. Preemption by federal law.

1-2. [Reserved for future use.]

3. Preemption by federal law.

In light of 47 USCS § 227(e)(1)'s carefully-drafted language and legislative history, and in spite of presumption against preemption that attaches to State's exercise of its police power, there is inherent federal objective in Truth in Caller ID Act of 2009 to protect non-harmful spoofing; Mississippi Caller ID Anti-Spoofing Act's proscription of non-harmful spoofing (spoofing done without intent to defraud, cause harm, or wrongfully obtain anything of value) frustrates this federal objective and is, therefore, conflict-preempted. Teltech Sys. v. Bryant, 702 F.3d 232, 2012 U.S. App. LEXIS 25217 (5th Cir. Miss. 2012).

Because court held that Mississippi Caller ID Anti-Spoofing Act was conflict-preempted by Truth in Caller ID Act of 2009, court did not need to consider its validity under dormant Commerce Clause or First Amendment. Teltech Sys. v. Bryant, 702 F.3d 232, 2012 U.S. App. LEXIS 25217 (5th Cir. Miss. 2012).

§ 77-3-803. Definitions.

As used in this article:

(a) "Call" means any type of telephone call made using a public switched telephone network, wireless cellular telephone service, or Voice-Over-Internet Protocol (VOIP) service that has the capability of accessing users on the public switched telephone network or a successor network.

(b) "Caller" means a person who places a call, whether by telephone, over a telephone line, or on a computer.

(c) "Enter" means to input data by whatever means into a computer or telephone system.

(d) "False information" means data that misrepresents the identity of the caller to the recipient of a call or to the network itself; however, when a person making an authorized call on behalf of another person inserts the name, telephone number or name and telephone number of the person on whose behalf the call is being made, such information shall not be deemed false information.

(e) "Telephone caller identification system" means a listing of a caller's name, telephone number, or name and telephone number that is shown to a recipient of a call when it is received.

HISTORY:

Laws, 2010, ch. 326, § 2, eff from and after July 1, 2010.

§ 77-3-805. Prohibition against entering false information into telephone caller identification system or placing call knowing false information was entered into telephone caller identification system.

(1) A person may not enter or cause to be entered false information into a telephone caller identification system with the intent to deceive, defraud or mislead the recipient of a call.

(2) A person may not place a call knowing that false information was

entered into the telephone caller identification system with the intent to deceive, defraud or mislead the recipient of the call.

HISTORY:
Laws, 2010, ch. 326, § 3, eff from and after July 1, 2010.

§ 77-3-807. Exceptions.

This article does not apply to:

(a) The blocking of caller identification information.

(b) Any law enforcement agency of the federal, state, county or municipal government.

(c) Any intelligence or security agency of the federal government.

(d) A telecommunications, broadband or voice-over-Internet service provider that is acting solely as an intermediary for the transmission of telephone service between the caller and the recipient.

HISTORY:
Laws, 2010, ch. 326, § 4, eff from and after July 1, 2010.

§ 77-3-809. Penalties.

(1) Any person who violates this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than One Thousand Dollars ($1,000.00) or shall be imprisoned in the county jail not exceeding one (1) year, or both.

(2) Any violation of this article constitutes an unlawful trade practice under Section 75-24-5 and, in addition to any remedies or penalties set forth in this article, shall be subject to any remedies or penalties available for a violation of that statute.

HISTORY:
Laws, 2010, ch. 326, § 5, eff from and after July 1, 2010.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 5.

ELECTRIC POWER

Article 1. Mississippi Rural Electrification Authority. 77-5-1
Article 3. Power Districts. 77-5-101
Article 5. Electric Power Associations. 77-5-201
Article 7. Local Governmental Power Development Under Laws of 1934. 77-5-301
Article 9. Local Governmental Power Development Under Laws of 1936. 77-5-401
Article 11. Unfair Practices of Electricity Distributors. 77-5-501
Article 13. Contracts with the United States. 77-5-601
Article 15. Joint municipal electric power. 77-5-701
Article 17. Municipal and County Utility Safety Incentive Programs. 77-5-801

ARTICLE 1.

MISSISSIPPI RURAL ELECTRIFICATION AUTHORITY.

Sec.
77-5-1. Short title.
77-5-3. Definitions.
77-5-5. Mississippi Rural Electrification Authority created.
77-5-7. Board of directors of authority.
77-5-9. Number, appointment, removal and terms of board of directors.
77-5-11. Organization of board; officers.
77-5-13. Compensation of members of board.
77-5-15. Members of board shall not hold full time state office.
77-5-17. Powers of board.
77-5-19. Corporate purpose of the authority.
77-5-21. General grant of powers to authority.
77-5-23. Grant of specific powers to authority.
77-5-25. Operations outside of state authorized.
77-5-27. Issuance of bonds by authority.
77-5-29. Validity of bonds.
77-5-31. Bonds of authority not debts of state.
77-5-33. Rates, fees and charges; application thereof.
77-5-35. Pledge of state to bondholders that it will not impair rate-making power of authority.
77-5-37. Security for bonds.
77-5-39. Rights and remedies of bondholders.
77-5-41. Moneys of the authority.
77-5-43. Assets of authority shall pass to state upon cessation of authority's existence.
77-5-45. Authority and its property subject to taxation.
77-5-47. Right of way over certain state lands granted to associations and corporations operating under this article.
77-5-49. Article complete in itself.

§ 77-5-1. Short title.

This article may be cited as the "State Rural Electrification Authority Law."

HISTORY:
Codes, 1942, § 5500; Laws, 1936, ch. 183.

Cross References —
Mississippi Energy Research Center, see § 57-55-15.

RESEARCH REFERENCES

Law Reviews.

1982 Mississippi Supreme Court Review: Administrative Law: Intervention by Mississippi's Attorney General on behalf of the public.53 Miss. L. J. 123.

§ 77-5-3. Definitions.

The following terms, whenever used in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

(a) "Authority" shall mean the corporation created by this article.

(b) "Board" shall mean the board of directors of the authority.

(c) "Bonds" shall mean and include negotiable bonds, interim certificates or receipts, notes, debentures and all other evidences of indebtedness either issued or the payment thereof assumed by the authority.

(d) "Acquire" shall mean and include construct, acquire by purchase, lease, devise, gift or the exercise of the power of eminent domain, or other mode of acquisition.

(e) "Person" or "inhabitant" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships and bodies politic.

(f) "Energy" shall mean and include any and all electric energy, no matter how or where generated or produced.

(g) "System" shall mean and include any plant, works, system facilities, or properties, or parts thereof, together with all appurtenances thereto, used or useful in connection with the generation, production, transmission or distribution of energy.

(h) "State" shall mean the State of Mississippi.

(i) "Municipality" shall mean any incorporated city, town or village of the state.

(j) "Federal agency" shall mean and include the United States of America, the President of the United States of America, Tennessee Valley Authority, the Federal Emergency Administrator of Public Works, the Administrator of the Rural Electrification Administration, and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

(k) "Improve" shall mean and include construct, reconstruct, improve, repair, extend, enlarge or alter.

(*l*) "Service" shall mean and include the sale or other disposition of energy at the lowest cost consistent with sound economy, public advantage and the prudent conduct of the business of the authority.

HISTORY:

Codes, 1942, § 5501; Laws, 1936, ch. 183.

§ 77-5-5. Mississippi Rural Electrification Authority created.

A corporation, to be known as the "Mississippi Rural Electrification

Authority," is hereby created as an agency of the state. Said authority shall be a public corporation in perpetuity under its corporate name, and shall under that name be a body politic and corporate.

HISTORY:
Codes, 1942, § 5502; Laws, 1936, ch. 183.

RESEARCH REFERENCES

ALR.
Liability of electric utility to nonpatron for interruption or failure of power. 54 A.L.R.4th 667.
Liability of electric company to one other than employee for injury or death arising from commencement or resumption of service. 46 A.L.R.5th 423.

CJS.
29 C.J.S., Electricity §§ 46-54.

§ 77-5-7. Board of directors of authority.

The authority shall have a board of directors. The powers of the authority shall be vested in and exercised by a majority of the members of the board then in office.

HISTORY:
Codes, 1942, § 5503; Laws, 1936, ch. 183.

§ 77-5-9. Number, appointment, removal and terms of board of directors.

The board shall consist of three members who shall be appointed by the governor of the state, one (1) each from the three (3) supreme court districts of the state. The first appointment of members of the board shall be made by the governor by April 10, 1936. The term of office of the members of the board first appointed shall be one (1), two (2) and three (3) years, respectively, dating from the first day of the month in which the last of such appointments is made, and thereafter the term of office of the directors shall be three years. Directors shall hold office until their successors are appointed and qualify, and directors shall be eligible for reappointment. An appointment to fill a vacancy shall be for the unexpired term. The governor may remove any member of the board within the term for which such member shall have been appointed, giving to such member a copy of the charges against him and an opportunity to be heard in his defense.

HISTORY:
Codes, 1942, § 5504; Laws, 1936, ch. 183.

Cross References —
Powers and duties of governor, generally, see § 7-1-5.

§ 77-5-11. Organization of board; officers.

Promptly after appointment the board shall meet to organize. At such meeting and at the first meeting in each year thereafter, the members shall choose from their number a president and a secretary.

HISTORY:
Codes, 1942, § 5505; Laws, 1936, ch. 183.

§ 77-5-13. Compensation of members of board.

The members of the board shall not be entitled to compensation for their services but they shall be entitled to reimbursement for all expenses incurred in connection with the performance of their duties, and to an honorarium of not more than six hundred dollars ($ 600.00) per year as the governor may decide, payable monthly.

HISTORY:
Codes, 1942, § 5506; Laws, 1936, ch. 183.

§ 77-5-15. Members of board shall not hold full time state office.

The members of the board shall not hold any full time salaried public office under the state.

HISTORY:
Codes, 1942, § 5507; Laws, 1936, ch. 183.

§ 77-5-17. Powers of board.

The board shall have power to do all things necessary or convenient in conducting the business of the authority, including, but not limited to:

(1) The power to adopt and amend by-laws for the management and regulation of its affairs and the business in which it is engaged;

(2) To use, with the consent of a municipality, the agents, employees or facilities of such municipality and to provide for payment of the agreed proportion of the costs therefor;

(3) To appoint officers, agents and employees and to fix their compensation;

(4) To inquire into any matter relating to the affairs of the authority, to compel by subpoena the attendance of witnesses and the production of books and papers material to any such inquiry, to administer oaths to witnesses and to examine witnesses and such books and papers;

(5) To appoint an advisory board to assist in the formation of proper policies in respect to the business of the authority;

(6) To execute instruments;

(7) To delegate to one or more of its members, or to its agents and employees, such powers and duties as it may deem proper.

HISTORY:
Codes, 1942, § 5508; Laws, 1936, ch. 183.

§ 77-5-19. Corporate purpose of the authority.

The corporate purpose of the authority is to encourage and promote the fullest possible use of energy by all of the inhabitants of the state by rendering service to said inhabitants, to whom energy is not available or, in the opinion of the board, is not available at reasonable rates.

HISTORY:
Codes, 1942, § 5509; Laws, 1936, ch. 183.

§ 77-5-21. General grant of powers to authority.

The authority is hereby vested with all powers necessary or requisite for the accomplishment of its corporate purpose and capable of being delegated by the legislature of this state. No enumeration of particular powers granted shall be construed to impair any general grant of power herein contained, or to limit any such grant to a power or powers of the same class or classes as those so enumerated.

HISTORY:
Codes, 1942, § 5510; Laws, 1936, ch. 183.

§ 77-5-23. Grant of specific powers to authority.

The authority shall have power:

(a) To sue and be sued.

(b) To have a seal and alter the same at pleasure.

(c) To render service to the inhabitants of the state and, by contract or contracts with any person, federal agency or municipality or by its own employees, to acquire, own, operate, maintain and improve a system or systems.

(d) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein, in its own name, subject to mortgages or other liens or otherwise and to pay therefor in cash or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

(e) To cause surveys to be made of areas throughout the state for the purpose of determining the economic soundness of the acquisition of a system or systems therein, to make plans and estimates of the cost of such system or systems and in connection therewith to enter on any lands, waters and premises for the purpose of making such surveys, soundings and examinations.

(f) To have complete control and supervision of the system or systems and to make such rules and regulations governing the rendering of service thereby as, in the judgment of the board, may be just and equitable.

(g) To fix, maintain and collect rates and charges for service.

(h) To use any right of way, easement or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of a system or systems, held by the state or any political subdivision thereof, provided, that the governing body of such political subdivision shall consent to such use.

(i) To execute all instruments necessary or convenient including, but not limited to, indentures of trust, leases, and bonds.

(j) To borrow money and issue bonds and to provide for the rights of the holders thereof.

(k) To accept gifts or grants of money or property, real or personal, and voluntary and uncompensated services from any person, federal agency or municipality.

(*l*) To condemn any land, easements, or rights of way, either on, under, or above the ground as the board may deem necessary for any of the purposes mentioned in this article, and such property or interest in such property may be so acquired whether or not the same is owned or held for public use by corporations, associations or persons having the power of eminent domain or otherwise held or used for public purposes. Such power of condemnation may be exercised in the mode or method of procedure prescribed by Chapter 27, Title 11, of the Mississippi Code of 1972, or in the mode or method of procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain. Where condemnation proceedings become necessary the judge of the circuit court in which such proceedings are filed shall upon application of the authority and upon the deposit in the court, to the use of the person or persons lawfully entitled thereto, of such an amount as the judge may deem necessary to assure just compensation, order that the right of possession shall issue immediately or as soon and upon such terms as the judge, in his discretion, may deem proper and just. Upon application of the parties in interest, the judge may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceedings.

(m) To make any and all contracts necessary or convenient for the full exercise of the powers herein granted, including, but not limited to, contracts with any person, federal agency, or municipality (a) for the purchase or sale of energy, (b) for the management and conduct of the business of the authority or any part thereof, and (c) for the acquisition of all or part of any system or systems. In connection with any such contract the authority shall have the power to stipulate and agree to such covenants, terms and conditions as the board may deem appropriate, including, but without limitations, covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices, and the manner of disposing of the revenues of the system or systems conducted and operated by the authority.

(n) To do any and all acts and things herein authorized or necessary or convenient to carry out the powers expressly given in this article under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

(o) To pledge all or any part of its revenues and to mortgage or otherwise incumber all or any part of its property for the purpose of securing the payment of the principal and interest on any of its bonds or other obligations.

HISTORY:
Codes, 1942, § 5511; Laws, 1936, ch. 183.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (*l*), by substituting "Chapter 27, Title 11, of the Mississippi Code of 1972" for "Chapter 33, Title 11, of the Mississippi Code of 1972." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References —
Grant of right of eminent domain to hydroelectric companies, see § 11-27-41.

RESEARCH REFERENCES

Am. Jur.
9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 11-18 (rights of way and eminent domain).

CJS.
29 C.J.S., Electricity §§ 46-54.

§ 77-5-25. Operations outside of state authorized.

To the extent necessary in the judgment of the board to make effective the powers conferred by this article, the authority shall have the power to acquire, own, operate, maintain and/or improve a generating and/or transmission system or systems outside the State of Mississippi.

HISTORY:
Codes, 1942, § 5512; Laws, 1936, ch. 183.

§ 77-5-27. Issuance of bonds by authority.

The authority shall have power and is hereby authorized from time to time to issue its bonds in anticipation of its revenues, for any corporate purpose. Said bonds may be authorized by resolution or resolutions of the board, and may be issued in one or more series, may bear such date or dates, mature at such time to times not exceeding twenty-five (25) years from their respective dates, bear interest at such rate or rates, not exceeding that allowed in Section 75-17-103, Mississippi Code of 1972, payable semiannually, be in such denominations, be in such form, either coupon or registered, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, with or without premium, and be declared or become due before the maturity date thereof, as such resolution or resolutions may provide. Said bonds may be issued for money or property, at public or private sale for such price or prices, as the board shall determine. The interest cost to maturity of the money or property (at its value as determined by the board, the determination of which shall be conclusive) received for any issue of said bonds, shall not exceed the rate allowed in Section 75-17-103, Mississippi Code of 1972. Said bonds may be repurchased by the authority out of any available funds at a price not to exceed the principal amount thereof and accrued interest, and all bonds so repurchased shall be canceled. Pending the preparation or execution of definitive bonds, interim receipts or certificates, or temporary bonds may be delivered to the purchaser or purchasers of said bonds. Any provision of law to the contrary notwithstanding, any bonds and the interest coupons appertaining thereto, if any, issued pursuant to this article shall possess all of the qualities of negotiable instruments.

HISTORY:
Codes, 1942, § 5513; Laws, 1936, ch. 183; Laws, 1982, ch. 434, § 35; Laws, 1983, ch. 541, § 43, eff from and after passage (approved April 25, 1983).

Cross References —
Law of negotiable instruments under Uniform Commercial Code, see § 75-3-101.

§ 77-5-29. Validity of bonds.

Said bonds bearing the signature of officers in office on the date of the signing thereof shall be valid and binding obligations notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers. The validity of said bonds shall not be dependent on nor be affected by the validity or regularity of any proceedings relating to the acquisition or improvement of the system or systems for which said bonds are issued. The resolution or resolutions authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this article, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

HISTORY:
Codes, 1942, § 5514; Laws, 1936, ch. 183.

§ 77-5-31. Bonds of authority not debts of state.

No holder or holders of any bonds issued under this article shall ever have the right to compel any exercise of the taxing power of the state or of any political subdivision thereof to pay said bonds or the interest thereon. Each bond issued under this article shall recite in substance that said bond, including the interest thereon, is payable from the revenues pledged to the payment thereof, and that said bond does not constitute a debt of the state.

HISTORY:
Codes, 1942, § 5515; Laws, 1936, ch. 183.

§ 77-5-33. Rates, fees and charges; application thereof.

The authority shall not be operated for gain or profit or primarily as a source of revenue to the state. The authority shall, however, prescribe and collect reasonable rates, fees or charges for the services, facilities and commodities made available by it, and shall revise such rates, fees or charges from time to time whenever necessary so that the authority shall be and always remain self-supporting, and shall not require appropriations by the state to enable it to carry out its purpose. The rates, fees, or charges prescribed shall be such as will produce revenue at least sufficient (a) to pay when due all bonds and interest thereon, for the payment of which such revenue is or shall have been pledged, charged or otherwise incumbered, including reserves therefor, and (b) to provide for all expenses of operation, maintenance or improvement of the system or systems acquired by the authority, including reserves therefor. Any surplus thereafter remaining shall be devoted solely to the reduction of rates.

HISTORY:
Codes, 1942, § 5516; Laws, 1936, ch. 183.

§ 77-5-35. Pledge of state to bondholders that it will not impair rate-making power of authority.

The state does pledge to and agree with the holders of bonds issued by the authority that the state will not limit or alter the rights and powers vested in the authority to fix and collect such rates, fees and charges as may be necessary or advisable in order to produce sufficient revenue to meet all expenses of maintenance and operation of its system or systems and to fulfill the terms of any agreements made with the holders of such bonds, or in any way impair the rights and remedies of the holders of such bonds, until such bonds together with interest thereon, and interest on any unpaid installments of interest, and all costs and expenses in connection with any suits, actions or proceedings by or on behalf of such bondholders are fully paid and discharged.

HISTORY:
Codes, 1942, § 5517; Laws, 1936, ch. 183.

§ 77-5-37. Security for bonds.

In connection with the issuance of bonds or in order to secure the payment of its bonds, the authority incorporated under this article shall have power:

(a) To pledge all or any part of its revenues.

(b) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to its bonds, to provide for the powers and duties of such trustee or trustees, to limit the liabilities thereof, and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any amount or proportion of them may enforce any such covenant.

(c) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or which, in the absolute discretion of the board, tend to make the bonds more marketable notwithstanding that such covenants, acts and things may restrict or interfere with the exercise of the powers granted in this article, it being the intention hereof to give the authority power to do all things in the issuance of bonds, and for their security, that a private business corporation can do under the general laws of the state.

HISTORY:
Codes, 1942, § 5518; Laws, 1936, ch. 183.

§ 77-5-39. Rights and remedies of bondholders.

In addition to all other rights and all other remedies, any holders of bonds of the authority, including a trustee for bondholders, shall have the right by mandamus or other suit, action or proceeding, at law or in equity, to enforce their rights against the authority and the board of the authority, including the right to require the authority and such board to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of, the revenues produced by such rate or charges, and to require the authority and such board to carry out any other covenants and agreements with such bondholders and to perform its and their duties under this article.

HISTORY:
Codes, 1942, § 5519; Laws, 1936, ch. 183.

§ 77-5-41. Moneys of the authority.

All moneys of the authority, from whatever source derived, shall be deposited in one or more banks or trust companies and, if the authority shall so require, each of such accounts shall be continuously secured by a pledge of direct obligations of the United States of America or of the State of Mississippi having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account or accounts. Such securities shall either be deposited with the authority or held by a trustee or agent satisfactory to the authority. In lieu of any such pledge of such securities, said deposits may be secured by a surety bond or bonds which shall be in form, sufficiency and substance satisfactory to the authority.

HISTORY:
Codes, 1942, § 5520; Laws, 1936, ch. 183.

§ 77-5-43. Assets of authority shall pass to state upon cessation of authority's existence.

In the event that the authority shall cease to exist, all of its assets remaining after all of its obligations and liabilities have been satisfied or discharged shall pass to and become the property of the state.

HISTORY:
Codes, 1942, § 5521; Laws, 1936, ch. 183.

§ 77-5-45. Authority and its property subject to taxation.

The authority and its property shall be liable for taxes and shall be taxed and assessed in the same manner and to the same extent as a privately owned utility.

HISTORY:
Codes, 1942, § 5522; Laws, 1936, ch. 183.

§ 77-5-47. Right of way over certain state lands granted to associations and corporations operating under this article.

All associations or corporations formed and operating under this article are hereby authorized and empowered to construct electric lines on and over all of those lands matured in the State of Mississippi through tax sale, and also on and over unimproved sixteenth sections, and lands granted in lieu of sixteenth sections.

The right and power to construct and maintain said lines shall be during the existence of said corporation or association, and without payment to the state for said easement.

HISTORY:
Codes, 1942, § 5525; Laws, 1938, ch. 249.

RESEARCH REFERENCES

Am. Jur.
9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 11-18 (rights of way and eminent domain).

§ 77-5-49. Article complete in itself.

This article is complete in itself and shall be controlling. The provisions of any other law, general, special, or local, except as provided in this article, shall not limit or restrict the powers granted by this article.

HISTORY:
Codes, 1942, § 5523; Laws, 1936, ch. 183.

ARTICLE 3.

POWER DISTRICTS.

Sec.
77-5-101. Short title.
77-5-103. Definitions.
77-5-105. Boundaries of power districts.
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77-5-111. Calling of election.
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77-5-169. Municipal and county aid to districts.
77-5-171. Districts and their property subject to taxation.
77-5-173. Declaration of purpose; construction; article complete in itself.

§ 77-5-101. Short title.

This article may be cited as "The Power District Law."

HISTORY:
Codes, 1942, § 5439; Laws, 1936, ch. 187.

Cross References —
Municipally-owned utilities generally, see §§ 21-27-11 et seq.

§ 77-5-103. Definitions.

Unless the context otherwise requires:

(a) "Power district" or "district" means a power district organized under this article, either as originally organized or as the same may be from time to time altered or amended.

(b) "Municipality" means any incorporated city, incorporated town or incorporated village.

(c) "Governing body," whenever used in relation to any municipality or county, means the body or board, by whatsoever name known, having charge of the governing of such municipality or county and shall be held to include the mayor or other chief executive officer of such municipality or county in any case wherein the concurrence or approval of such officer is required by the law governing such municipality or county for the adoption of any municipal or county ordinance or resolution or other municipal or county act provided for in this article.

(d) "Board of directors," "directors" or "board" means the board of directors of a power district selected as provided in this article, duly constituted, organized and acting as a board.

(e) "Election unit" means an election district as provided for by Chapter 5 of Title 23, Mississippi Code of 1972.

(f) "Bonds" shall mean and include negotiable bonds, interim certificates or receipts, notes, debentures and all other evidences of indebtedness either issued or the payment thereof assumed by the authority.

(g) "Public utility" or "utility" means the plant, works, system, facilities or properties together with all parts thereof and appurtenances thereto, including contract rights, used and useful primarily for the production, transmission or distribution of electric energy to or for the public for any purpose.

HISTORY:
Codes, 1942, § 5440; Laws, 1936, ch. 187.

Editor's Notes —
Chapter 5 of Title 23, referred to in item (e), was repealed effective January 1, 1987. For present similar provisions, see § 23-15-281 et seq.

§ 77-5-105. Boundaries of power districts.

Power districts, the boundaries of which shall be coterminous with the boundaries of one or more election units, which need not be contiguous, but which shall not be more distant from one another than twenty miles, may be created as hereafter provided in this article, and when so created shall be considered bodies politic and corporate and shall possess and may exercise the powers granted in this article. However, no municipality shall be divided in the creation of a district.

HISTORY:
Codes, 1942, § 5441; Laws, 1936, ch. 187.

§ 77-5-107. Resolution seeking election authorizing creation of power district.

The governing bodies of one-half or more of the municipalities, if any, proposed to be included in the district [or, (a) if the proposed district includes only territory not within the corporate limits of any municipality, then the governing body or bodies of the county or counties containing such territory, or (b) if the proposed district includes a municipality or municipalities and territory not within the corporate limits of any municipality, then the governing bodies of the municipality, or if more than one, the governing bodies of one-half or more of the total number of municipalities proposed to be included in the district and of the county or counties containing such territory] shall first pass resolutions, declaring the public convenience and necessity demand the creation and maintenance of the power district to be known as the "(giving the name) power district." Such resolution shall name the municipalities and describe the unincorporated territory, if any, which it is proposed to include in such district. Any such resolutions so passed shall be presented to the clerk of the board of supervisors of each county containing a part of the proposed district. Such resolutions shall request that an election be called without delay for determining whether such district shall be created.

Each such resolution shall divide the proposed district into five subdistricts, as provided in Section 77-5-123, giving each a number. In the event that the boundaries of the district as originally proposed are changed at the election, the boundaries of the subdistricts shall be changed as hereinafter provided.

HISTORY:
Codes, 1942, § 5441; Laws, 1936, ch. 187.

Editor's Notes —
The bracketed language in the first sentence of the first paragraph appears in the section as it was enacted.

§ 77-5-109. Petition seeking election authorizing creation of power district.

In lieu of the resolutions, or any of them, provided for in the preceding section, a petition or petitions may be presented to the clerk of the board of supervisors of each county in which any part of the proposed district is situated, signed by at least ten percent (10%) of the qualified voters in any election unit or units to be included in the proposed district. Said petition shall declare that in the opinion of the petitioners, public convenience and necessity demand the creation and maintenance of a power district, and shall contain the information required by this article of the resolutions referred to in the preceding section. The petition may be on separate sheets of paper, but each sheet shall contain the affidavit of the person who circulated the same, certifying that each name signed thereto is the true signature of the person whose name it purports to be.

HISTORY:
Codes, 1942, § 5441; Laws, 1936, ch. 187.

§ 77-5-111. Calling of election.

Upon receipt of the certified copies of the resolutions and/or petitions mentioned in the preceding sections, each such board of supervisors shall without delay call an election in each election unit of such county proposed to be included in the district, for the purpose of determining whether the proposed district shall be created, and shall give notice of such election. Such notice shall state the name of the proposed district and describe its boundaries, and shall state the time when such election shall be held and the location of the polling places. The same shall be published at least once a week for at least three (3) consecutive weeks before the date of said election in some newspaper or newspapers having a general circulation within the proposed district. In case the proposed power district includes election units located in two (2) or more counties, then the board of supervisors of the county in which the largest portion of the territory of the proposed power district is located shall fix the date of such election.

HISTORY:
Codes, 1942, § 5441; Laws, 1936, ch. 187.

JUDICIAL DECISIONS

1. In general.
Since publication of notice of an election to determine whether a power district should be established is a fundamental requirement of the statute, such jurisdictional fact must be specifically adjudicated in the minutes of the board of supervisors, and cannot be supplied by inference or other information outside the min-

utes of the board. Mississippi Power & Light Co. v. Mississippi Power Dist., 230 Miss. 594, 93 So. 2d 446, 1957 Miss. LEXIS 402 (Miss. 1957).

This section, directing a liberal interpretation of the Power District Law, does not warrant the omission of the jurisdictional requirement of a notice of an election to determine whether or not a power district should be established. Mississippi Power & Light Co. v. Mississippi Power Dist., 230 Miss. 594, 93 So. 2d 446, 1957 Miss. LEXIS 402 (Miss. 1957).

An order of the board of supervisors purporting to create an electric power district, which failed to affirmatively adjudicate that any notice of the election was published, and, if so, how, where and when it was published, was void. Mississippi Power & Light Co. v. Mississippi Power Dist., 230 Miss. 594, 93 So. 2d 446, 1957 Miss. LEXIS 402 (Miss. 1957).

A foreign power and light company, qualified to do business within the state, which had a considerable investment in electric distribution lines in a county and election district, sought to be incorporated as an electric power district, was a person adversely affected by the order of the board of supervisors purporting to create a power district, and could appeal therefrom. Mississippi Power & Light Co. v. Mississippi Power Dist., 230 Miss. 594, 93 So. 2d 446, 1957 Miss. LEXIS 402 (Miss. 1957).

§ 77-5-113. Conduct of election.

The ballots for said election shall be in such form, shall contain such instructions and shall be of such size and color as are required by Chapter 5 of Title 23, Mississippi Code of 1972, except that there shall appear thereon the following: "Shall the '(giving the name thereof) power district' be created and established?

( ) Yes ( ) No"

Such election and all matters pertaining thereto not otherwise provided for herein shall be held and conducted and the results thereof ascertained, determined and declared in accordance with Chapter 5 of Title 23, Mississippi Code of 1972. No person shall be entitled to vote in such election unless he or she be a qualified elector of an election unit in which such election is held. Such election may be held on the same day as any other state, county, or city election and may be consolidated therewith.

HISTORY:

Codes, 1942, § 5441; Laws, 1936, ch. 187.

Editor's Notes —

Chapter 5 of Title 23, referred to in this section, was repealed effective January 1, 1987. For current provisions of the Mississippi Election Code, see § 23-15-1 et seq.

§ 77-5-115. Canvassing results of election; declaration of creation of district.

Each county board of election commissioners, if more than one (1), shall canvass the returns as required by Section 23-5-169, and shall ascertain and declare the result of such election in each election unit separately and shall further ascertain and determine the total number of qualified electors in each such election unit separately as of the date of such election. Each county board of election commissioners, if more than one (1), shall, within ten (10) days from the date of such election, file with the clerk of the board of supervisors of their county a statement of the result of said election in each such election district separately and of the number of qualified electors in each such election unit as of the date of the election. In the event the proposed power district includes territory located in two or more counties such statement shall also, within the same period of time, be filed with the clerk of the board of supervisors of the county in which the largest portion of the territory of the proposed power district is located. The board of supervisors of the county in which such proposed power district is located, or in the event such proposed power district includes territory located in two (2) or more counties, the board of supervisors of the county in which the largest portion of such territory is located, shall promptly canvass all such statements and shall order and declare the district created and composed of the election units in which a majority of those voting on the proposition voted in favor of the creation of the district. The election unit or units so approving the organization of said district shall contain not less than two-thirds (⅔) of the number of qualified voters within the district as first proposed.

HISTORY:
Codes, 1942, § 5441; Laws, 1936, ch. 187.

Editor's Notes —
Section § 23-5-169, referred to in this section, was repealed effective January 1, 1987. For present similar provisions, see § 23-15-601.

JUDICIAL DECISIONS

1. In general.
An order of the board of supervisors purporting to create an electric power district, which failed to affirmatively adjudicate that any notice of the election was published, and, if so, how, where and when it was published, was void. Mississippi Power & Light Co. v. Mississippi Power Dist., 230 Miss. 594, 93 So. 2d 446, 1957 Miss. LEXIS 402 (Miss. 1957).

§ 77-5-117. Filing of order declaring creation of district.

Such board of supervisors shall thereupon promptly cause a certified copy of the order declaring such power district created to be filed in the office of the secretary of state. A certified copy of such order shall also be filed with the clerk of each municipality included in the proposed district, and with the clerk of the board of supervisors of each county, any unincorporated part of which is included in the proposed district. From and after the filing of such copy of the order with the secretary of state, the creation and incorporation of such district shall be deemed complete.

HISTORY:
Codes, 1942, § 5441; Laws, 1936, ch. 187.

§ 77-5-119. Payment of costs incurred in creation of district.

All costs properly incurred by the boards of supervisors and the boards of election commissioners of the respective counties in publishing notice of the election, in employing persons to conduct the same, or in performing other duties imposed by the provisions of this article, shall be paid as other similar expenses of such boards are paid and shall be and become a charge in favor of such boards against the district, to be repaid upon the presentation of proper vouchers therefor to such district, when and as such district has funds available for that purpose.

HISTORY:
Codes, 1942, § 5441; Laws, 1936, ch. 187.

§ 77-5-121. Proceedings contesting creation of district.

No informality in any proceedings or in the conduct of said election, not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the creation of any district. Any proceedings wherein the validity of such creation is denied shall be commenced within thirty (30) days from the date of filing the order creating the district with the secretary of state, otherwise such creation and the legal existence of said district shall be held to be valid and in every respect legal and incontestable.

HISTORY:
Codes, 1942, § 5441; Laws, 1936, ch. 187.

JUDICIAL DECISIONS

1. In general.
This section, directing a liberal interpretation of the Power District Law, does not warrant the omission of the jurisdictional requirement of a notice of an election to determine whether or not a power district should be established. Mississippi Power & Light Co. v. Mississippi Power Dist., 230 Miss. 594, 93 So. 2d 446, 1957 Miss. LEXIS 402 (Miss. 1957).

§ 77-5-123. Subdistricts.

The boundaries of the subdistricts shall be drawn in such a manner that each shall contain approximately an equal number of voters, except that no municipality shall contain more than two (2) subdistricts, nor shall any municipality be divided unless it shall comprise more than one (1) subdistrict. Should the district as finally constituted comprise a smaller area than originally proposed because of the failure of one or more election units or municipalities to approve the district at the election, then at the first meeting of the board of directors the boundaries of the subdistricts shall be redetermined so as to conform to the terms hereof.

HISTORY:
Codes, 1942, § 5442; Laws, 1936, ch. 187.

§ 77-5-125. Alteration of districts.

Whenever a district shall, by resolution of its board, determine that it is in the public interest and in the interest of efficient and economical operation of a utility to alter the territorial limits of a district, it shall so order and certified copies of such order shall be filed with the secretary of state, the clerk of each municipality in the district and the clerk of the board of supervisors of each county in which any portion of the district is located. Thereupon the territorial limits of a district shall be considered altered in accordance with such order. However, any territory added to a district must be coterminous with an election unit or units. No additional territory may be added to a district except upon the petition of not less than one-third (⅓) of the qualified voters residing therein, certified as provided in Section 77-5-109. The order of the board hereinabove referred to shall contain a statement of the number and percentage of such petitioners, if any. In the event the boundaries of any election unit or units are changed subsequent to the creation of a district, then the whole of any election unit, any part of which was theretofore within the district, shall automatically become a part of said district.

HISTORY:
Codes, 1942, § 5444; Laws, 1936, ch. 187.

§ 77-5-127. Consolidation of districts.

Two (2) or more districts may be consolidated by a determination of the board of each district, fixing the terms and conditions of such consolidation. Certified copies of such determination shall be filed with the secretary of state, the clerk of each municipality in the district and the clerk of the board of supervisors of each county in which any portion of the district is located. Thereupon the consolidation shall be effective to create a single district.

Preexisting rights and liabilities shall not be affected by such consolidation.

HISTORY:
Codes, 1942, § 5445; Laws, 1936, ch. 187.

§ 77-5-129. Dissolution of districts.

(1) A district shall be considered dissolved:

(a) Where, within two (2) years after its creation, it has not become the owner or operator, or commenced construction, of a public utility. Any time consumed in any proceeding or contest before any judicial or other tribunal shall not be included as part of said two-year period.

(b) Where a district has disposed of all of its utility property and for one (1) year thereafter shall not have owned or operated a public utility.

(c) Where the board has by resolution determined that the continued existence of the district is not in the public interest, and shall have made an order to such effect and filed a certified copy of such order with the secretary of state. However, no district shall be dissolved under this subsection until after an election held in the manner set forth in this article to be called and held by the respective county boards of election commissioners upon the request of the board, except that in lieu of the question prescribed by section 77-5-113 for inclusion on the ballot there shall appear thereon the following: "Shall the '(giving the name thereof) power district' be dissolved?
( )Yes ( ) No"

A majority of those voting in the entire district shall govern.

(2) Any district dissolved in accordance with the provisions of this section shall cease to continue as a body corporate for the purpose of doing business but shall continue as such for such period as may be necessary to settle the business of the district, wind up its affairs, dispose of its assets and settle its obligations, and for no other purpose. Under such circumstances the board

shall have the powers of receivers in equity to determine what is in the best interest of creditors and users of the service of the district. In the event of dissolution the assets of the district and the proceeds thereof shall be used first to pay the expenses of settling the affairs of the district, then for the payment of creditors in the order of their priority, and any surplus remaining shall become the property of the State of Mississippi.

HISTORY:
Codes, 1942, § 5446; Laws, 1936, ch. 187.

§ 77-5-131. Government of districts; selection of directors.

(1) The government of each district shall be vested in a board of five (5) directors. There shall be a director for each subdistrict who shall be appointed by the chief executive or executives of the municipality or municipalities (or municipalities and counties if any unincorporated territory is included within said subdistrict) included within said subdistrict. For the purpose of this article the president of the board of supervisors shall be considered as the chief executive of the county.

(2) Within ten (10) days after the creation and incorporation of such district shall have been completed the chief executives (if there be more than one) in each subdistrict shall meet for the selection of a director for said subdistrict, the time and place of such meeting to be designated by the chief executive of the county. If there be only one (1) chief executive in such subdistrict, he shall select the director thereof.

(3) Where a municipality or unincorporated territory contains two subdistricts, the chief executive of such municipality or county shall select a director for each subdistrict, and shall file forthwith certified copies thereof as provided by subsection (4) of this section.

(4) In the selection of a director, each chief executive (if there be more than one) shall have one (1) vote for each one hundred (100) voters or major portion thereof within his municipality or unincorporated county territory, as the case may be, or such part thereof as is located in said subdistrict. A majority vote shall be necessary for the selection of a director. The result of said selection shall be certified to by the chairman of said meeting (or by the chief executive, if there be only one) and forthwith filed with the secretary of state and the clerk of each municipality and the clerk of the board of supervisors of each county any unincorporated part of which is included in said district. Such meeting may be adjourned from time to time.

(5) The meeting of the chief executives for the selection of directors subsequent to the initial selection of directors shall be held within the district on the second Tuesday in April in even numbered years prior to the expiration of the term of any director. The secretary of the district shall designate the time and place of each such meeting. Except as otherwise provided in this subsection, every selection of a director subsequent to the intitial selection of directors shall be made in the manner provided by this article for the initial selection of directors.

(6) The secretary of the district, appointed pursuant to Section 77-5-143, shall obtain, compile and file in his office, for the information of the public, thirty days prior to the date of the election of any director as provided herein, a statement showing the total number of qualified electors in each election unit included in the district. The county boards of election commissioners shall furnish such information so far as obtainable from their records, duly certified, to the secretary of the district upon his request therefor.

HISTORY:
Codes, 1942, § 5443; Laws, 1936, ch. 187.

§ 77-5-133. Term and oath of directors.

Directors selected from odd numbered subdistricts shall for the first term serve for a period which shall end two (2) years after the first Monday of May of the next even numbered year. Directors selected from even numbered subdistricts shall for the first term serve for a period which shall end four (4) years after the first Monday of May of the next even numbered year.

The regular term of directors of the district after the first term shall be for four (4) years. Each director shall hold office until his successor is selected and qualifies.

Each director shall, before entering upon the discharge of his duties, take and subscribe to the oath of office prescribed by Section 268 of the Constitution of 1890. Such oath shall be filed in the office of the clerk of the district.

HISTORY:
Codes, 1942, § 5443; Laws, 1936, ch. 187.

Cross References —
Oath of office required for all elected or appointed State officials, see Miss. Const. Art. 14, § 268.

§ 77-5-135. Vacancies in director's office.

The death of a director, his resignation, his removal for cause by the appointing power, his disability to continue for any cause to act as director, or his change of residence from the district, shall vacate the office. Within twenty (20) days after a determination of the vacancy by the appointing power, a successor for the unexpired term shall be selected by such appointing power.

HISTORY:
Codes, 1942, § 5449; Laws, 1936, ch. 187.

§ 77-5-137. Compensation and expenses of directors.

Each director of the district shall receive compensation from the district for his services as such at the rate of not more than ten dollars ($10.00) for each day he shall attend meetings of the board or when he is engaged upon the business of the board, not to exceed the sum of two hundred fifty dollars ($250.00) in any one year. He shall also be entitled to be reimbursed for actual and necessary expenses incurred by him in the performance of his duties required of him by law or by resolution or vote of the board.

HISTORY:
Codes, 1942, § 5450; Laws, 1936, ch. 187.

§ 77-5-139. Board of directors to function as legislative body of district.

The board of directors shall constitute the legislative body of such district and determine all questions of policy.

HISTORY:
Codes, 1942, § 5451; Laws, 1936, ch. 187.

§ 77-5-141. Powers of the district board.

The board of directors of any district shall have power and authority:

(a) To exercise by vote, ordinance or resolution all of the general powers of the district.

(b) To make all needful rules, regulations and by-laws for the management and the conduct of the affairs of the district and of the board.

(c) To adopt a seal for the district, prescribe the style thereof, and alter the same at pleasure.

(d) To lease, purchase, sell, convey and mortgage the property of the district and to execute all instruments, contracts, mortgages, deeds or bonds on behalf of the district in such manner as the board shall direct.

(e) To appoint and fix the salaries and duties of such experts and attorneys as it deems necessary, to hold office during the pleasure of the board and upon such terms and conditions as the board may require.

(f) To make any and all contracts necessary or convenient for the full exercise of the powers in this article granted, including, but not limited to, contracts with any municipality, the United States of America, the President of the United States of America, Tennessee Valley Authority, the Federal Emergency Administrator of Public Works and any and all other authorities, agencies, and instrumentalities of the United States of America, for the purchase or sale of electric energy, and for the acquisition of all or any part of any utility or utilities. In connection with any such contract, the board may stipulate and agree to such covenants, terms and conditions as the board may deem appropriate including, but without limitation, covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices, and the manner of disposing of the revenues of the utility operated and maintained by the district.

(g) To do all things necessary or convenient to carry out its functions.

HISTORY:
Codes, 1942, § 5452; Laws, 1936, ch. 187.

§ 77-5-143. Appointment of officers.

The board shall appoint a general manager, a secretary and a treasurer, and the board may appoint and fix the duties of such other officers as it deems necessary. Such appointees shall hold office during the pleasure of the board, and such appointees shall give such bonds and in such amounts as the board may require. The general manager shall not be, and the clerk and treasurer need not be, members of the board. The secretary and treasurer may be the same person.

HISTORY:
Codes, 1942, § 5451; Laws, 1936, ch. 187.

§ 77-5-145. Qualifications, powers and duties of general manager.

(1) The general manager shall be the chief executive officer of the district. He shall be chosen by the board of directors solely on the basis of his executive and administrative qualifications and need not, when appointed, be a resident of the state. All other things being equal, the board of directors shall appoint as general manager a person with experience in the construction, operation or management of public utilities. In case of the absence or disability of the manager, the board may designate some qualified person to perform the duties of the office during such absence or disability.

(2) The general manager shall have full charge and control of the construction of the works of said district and of their maintenance and operation, and of the administration of the business affairs of said district. The powers and duties of the general manager shall be:

(a) To see that all resolutions, rules and regulations of the district are enforced;

(b) To appoint or hire, except as otherwise provided in this article, all heads of departments, subordinate officials and employees necessary for the administration of the affairs of said district, and to remove the same;

(c) To attend to all meetings of the board of directors (but not to vote) and submit a general report of the affairs of the district, and to participate in the discussion of all matters coming before the board;

(d) To keep the directors advised as to the financial condition and future needs of the district, and to prepare and submit an annual budget;

(e) To prepare or cause to be prepared, all plans and specifications for the construction of the works of said district;

(f) To perform such other and additional duties as the board of directors may require.

(3) The general manager shall within sixty (60) days from the end of each fiscal year cause to be published a financial report showing the result of operations for the preceding fiscal year and the financial status of the district on the last day thereof. Said publication shall be made at least three (3) times in newspapers of general circulation printed and published in the district, or, if there be no such newspaper in the district, then in some newspaper of general circulation within the district. So far as practical said publications shall be in different newspapers.

HISTORY:
Codes, 1942, § 5453; Laws, 1936, ch. 187.

§ 77-5-147. Duties of secretary.

The principal duties of the secretary of the district shall be to act as secretary of the board and to record and sign all minutes of meetings of the board, including all resolutions and ordinances adopted by the board; to safely and systematically keep all records, files and papers of the board; to safely keep the corporate seal of the district and to affix the same on behalf of the board, and to all certificates by him made as secretary of the district; to sign, execute or acknowledge with the chairman of the board all contracts, deeds, leases or other instruments authorized by the board to be executed by or on behalf of the district, and, if authorized, to deliver the same; and to perform such other duties as may be imposed upon him by law or by vote, resolution or ordinance adopted by the board.

HISTORY:
Codes, 1942, § 5453; Laws, 1936, ch. 187.

§ 77-5-149. Duties of treasurer.

The principal duties of the treasurer of the district shall be to demand, receive, keep and account for all moneys and credits of the district; to pay to the persons entitled thereto the amounts called for in the orders or warrants drawn upon him by the secretary of the district and to take and keep receipts, vouchers or other suitable evidences of payment therefor; to keep accurate account of all moneys received and disbursed by him and to render such accounts, statements and inventories of moneys and credits received and disbursed and on hand and generally of all matters pertaining to his office as the board of directors may require; and to perform such other duties as may be imposed upon him by law or by vote, resolution or ordinance adopted by the board.

HISTORY:
Codes, 1942, § 5453; Laws, 1936, ch. 187.

§ 77-5-151. Corporate purpose of district.

A district shall be created for the purpose of conducting and operating a utility, and to carry out such purpose it shall have power and authority to acquire, construct, reconstruct, operate, maintain, extend or improve any utility within or without the district, and to furnish, deliver and sell to the public, to any municipality, to the state and to any public institution heat, light and power service and any other service, commodity or facility which may be produced or furnished in connection therewith.

HISTORY:
Codes, 1942, § 5447; Laws, 1936, ch. 187.

§ 77-5-153. General powers of district.

Any district created pursuant to the provisions of this article shall be vested with all the powers necessary and requisite for the accomplishment of the purpose for which such district is created, capable of being delegated by the legislature. No enumeration of particular powers created in Section 77-5-155 shall be construed to impair or limit any general grant of power herein contained or to limit any such grant to a power or powers of the same class or classes as those enumerated. The district is empowered to do all acts necessary, proper or convenient in the exercise of the powers granted under this article.

HISTORY:
Codes, 1942, § 5447; Laws, 1936, ch. 187.

§ 77-5-155. Specific powers of district.

Any district created pursuant to this article shall have the power:

(a) To sue and be sued

(b) To have a seal

(c) To acquire by purchase, gift, devise, lease or exercise of the power of eminent domain or other mode of acquisition and to hold and dispose of real and personal property of every kind within or without the district, subject to mortgages or any other liens.

(d) To make and enter into contracts, conveyances, mortgages, deeds of trust, bonds or leases.

(e) To incur debts, to borrow money, to issue negotiable bonds and other evidences of indebtedness and to provide for the rights of holders thereof.

(f) To fix, maintain and collect rates and charges for any service.

(g) To pledge all or any part of its revenues.

(h) To make such covenants in connection with the issuance of bonds, or to secure the payment of bonds, that a private business corporation can make under the general laws of the state, notwithstanding that such covenants may operate as limitations on the exercise of any power granted by this article.

(i) To use any right of way, easement or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of a utility, held by the state or any political subdivision thereof, provided that the governing body of such political subdivision shall consent to such use.

HISTORY:
Codes, 1942, § 5447; Laws, 1936, ch. 187.

RESEARCH REFERENCES

Am. Jur.
9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 11-18 (rights of way and eminent domain).

§ 77-5-157. Exercise of eminent domain by district.

Any district shall have the power to condemn any land, easements, or rights of way either on, under or above the ground as the board may deem necessary for any of the purposes mentioned in this article, and such property or interest in such property may be so acquired whether or not the same is owned or held for public use by corporations, associations or persons having the power of eminent domain, or otherwise held or used for public purposes. Such power of condemnation may be exercised in the mode or method of procedure prescribed by Chapter 27 of Title 11, Mississippi Code of 1972, or in the mode or method or procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain. Where condemnation proceedings become necessary the judge of the circuit court in which such proceedings are filed shall upon application of the district and upon the deposit in the court, to the use of the person or persons lawfully entitled thereto, of such an amount as the judge may deem necessary to assure just compensation, order that the right of possession shall issue immediately or as soon and upon such terms as the judge in his discretion, may deem proper and just. Upon application of the parties in interest, the judge may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceedings.

HISTORY:
Codes, 1942, § 5461; Laws, 1936, ch. 187.

Cross References —
Grant of right of eminent domain to hydroelectric companies, see § 11-27-41.

RESEARCH REFERENCES

Am. Jur.
9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 11-18 (rights of way and eminent domain).

§ 77-5-159. Operations outside of state authorized.

To the extent necessary in the judgment of the board to make effective the powers conferred by this article, the district shall have the power to acquire, own, operate, maintain and/or improve a generating and/or transmission system or systems outside the State of Mississippi.

HISTORY:
Codes, 1942, § 5448; Laws, 1936, ch. 187.

§ 77-5-161. Issuance of bonds by district.

Each district shall have power and is hereby authorized from time to time to issue its bonds in anticipation of its revenues. Said bonds may be issued for any corporate purpose or purposes of such district. Said bonds shall be authorized by resolution of the board of such district and may be issued in one or more series, may bear such date or dates, mature at such time or times not exceeding forty years from their respective dates, be in such denominations, be in such form, either coupon or registered, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, with or without premium, and be declared or become due before the maturity date thereof, as such resolution or resolutions may provide. Said bonds may be issued for money or property, at public or private sale for such price or prices, as the board shall determine, provided that the interest cost to maturity of the money or property (at its value as determined by such board, the determination of which shall be conclusive), received for any issue of said bonds, shall not exceed six (6) per centum per annum, payable semiannually. Said bonds may be repurchased by the district out of any funds available for such purpose at a price of not more than the principal amount thereof and accrued interest, and all bonds so repurchased shall be canceled. Pending the preparation or execution of definitive bonds, interim receipts or certificates or temporary bonds may be delivered to the purchaser of said bonds. Any provision of law to the contrary notwithstanding, any bonds and the interest coupons appertaining thereto, if any, issued pursuant to this article shall possess all of the qualities of negotiable instruments.

HISTORY:
Codes, 1942, § 5454; Laws, 1936, ch. 187.

Cross References —
Law of negotiable instruments under Uniform Commercial Code, see § 75-3-101.

§ 77-5-163. Rights and remedies of bondholders.

In addition to all other remedies, any holder of a bond of any district incorporated under this article, including a trustee for bondholders, shall have the right, subject to any contractual limitations binding upon such bondholders or trustee, and subject to the prior or superior rights of others:

(a) By mandamus or other suit, action or proceeding, at law or in equity, to enforce his rights against such district and the board of such district, including the right to require such district and such board to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of, the revenues produced by such rates or charges, and to require such district and such board to carry out any other covenants and agreements with such bondholder and to perform its and their duties under this article.

(b) By action or suit in equity to enjoin any acts or things which may be unlawful or a violation of the rights of such bondholder.

(c) By action or suit in equity to require such board to account as if it were the trustee of an express trust for such bondholder.

(d) By suit, action or proceeding in court exercising equitable jurisdiction to obtain the appointment of a receiver of the utility or utilities owned or operated by the district, or any part or parts thereof, who may enter and take possession of such utility or any part or parts thereof, including all property, land, property rights, easements and other adjuncts of the utility.

Such receiver may operate and maintain the same, and collect and receive all revenues thereafter arising therefrom in the same manner as such district itself might do, and shall deposit all such moneys in a separate account or accounts and apply the same in accordance with the obligations of such district as the court shall direct.

HISTORY:
Codes, 1942, § 5455; Laws, 1936, ch. 187.

§ 77-5-165. Reduction of rates.

After all proper charges against the revenues of a district have been made, any surplus remaining shall be devoted solely to the reduction of rates.

HISTORY:
Codes, 1942, § 5457; Laws, 1936, ch. 187.

§ 77-5-167. Moneys of districts.

All moneys of a district, from whatever source derived, shall be deposited in one or more banks or trust companies, and, if the district shall so require, each of such accounts shall be continuously secured by a pledge of direct obligations of the United States of America or of the State of Mississippi having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account or accounts. Such securities shall either be deposited with the district or held by a trustee or agent satisfactory to the district. In lieu of any such pledge of such securities, said deposits may be secured by a surety bond or bonds which shall be in form, sufficiency and substance satisfactory to the district.

HISTORY:
Codes, 1942, § 5458; Laws, 1936, ch. 187.

§ 77-5-169. Municipal and county aid to districts.

Any municipality situated within the territorial limits of a district and any county a part of which is so situated, may advance funds to such district to pay the preliminary organization and administration expenses thereof, on such terms of repayment as the governing body of such municipality or county shall determine. Notwithstanding the provisions of any law to the contrary, any such municipality or county is authorized and empowered to borrow money for a period not to exceed one year from the date of such borrowing, for the purpose of making such advances.

HISTORY:
Codes, 1942, § 5456; Laws, 1936, ch. 187.

§ 77-5-171. Districts and their property subject to taxation.

All districts and their property shall be liable for taxes and shall be taxed and assessed in the same manner and to the same extent as privately owned utilities.

HISTORY:
Codes, 1942, § 5459; Laws, 1936, ch. 187.

§ 77-5-173. Declaration of purpose; construction; article complete in itself.

This article is for the public purpose of promoting the increased use of electricity in the urban and rural areas of this state, and of enabling the residents thereof to secure the benefit of the surplus power generated or to be generated by the Tennessee Valley Authority at Wilson Dam in the State of Alabama, or the power generated at any other works or dams. The powers granted by this article shall be liberally construed to effectuate the purposes hereof, and to this end every district shall have power to do all things necessary or convenient to carry out the purposes hereof in addition to the powers expressly conferred in this article. This article is complete in itself and shall be controlling. The provisions of any other law, general, special or local, except as provided in this article, shall not limit or restrict the powers granted by this article.

HISTORY:
Codes, 1942, § 5460; Laws, 1936, ch. 187.

JUDICIAL DECISIONS

1. In general.

Whether electrical cooperatives shall be permitted to invade area already having benefit of an electric utility, must have the consideration of the state public service commission and REA. Mississippi Power & Light Co. v. Coldwater, 234 Miss. 615, 106 So. 2d 375, 112 So. 2d 222, 1959 Miss. LEXIS 574 (Miss. 1959).

This section, directing a liberal interpretation of the Power District Law does not warrant the omission of the jurisdictional requirement of a notice of an election to determine whether or not a power district should be established. Mississippi Power & Light Co. v. Mississippi Power Dist., 230 Miss. 594, 93 So. 2d 446, 1957 Miss. LEXIS 402 (Miss. 1957).

ARTICLE 5.

ELECTRIC POWER ASSOCIATIONS.

Sec.
77-5-201. Short title.
77-5-203. Definitions.
77-5-205. Formation of non-profit corporations authorized.
77-5-207. Contents of certificate of incorporation.
77-5-209. Prohibition on use of words “electric power association” and “electric cooperative.”.
77-5-211. Execution and filing of certificate of incorporation.
77-5-213. Chartering existing corporations under this article.
77-5-215. Amendment of certificate of incorporation.
77-5-217. Consolidation of corporations.
77-5-219. Dissolution of corporation.
77-5-221. Board of directors.
77-5-223. Powers of board of directors.

Sec.
77-5-225. Membership in corporation.
77-5-227. Certificate of membership; voting.
77-5-229. General powers of corporation.
77-5-231. Specific powers of corporation.
77-5-233. Operations outside of state authorized.
77-5-235. Rates; limitations on disconnections; attaching entities.
77-5-237. Disposing of corporate property.
77-5-239. Power of corporation to incur obligations and liabilities, borrow money, issue notes, bonds, etc.
77-5-241. Interest rates.
77-5-243. Power to execute and deliver instruments to create security interest in corporation property.
77-5-245. Purchase and cancellation of bonds.
77-5-247. Monies of corporations.
77-5-249. Corporations and their property subject to taxation.
77-5-251. Construction of article; article complete in itself.
77-5-253. Annual financial and compliance audits.
77-5-255. Mediation of disputes between members or customers and electric power associations.
77-5-256. Generation and transmission cooperative; definitions; amendment of certificate of incorporation; board of directors; corporate purpose; applicability of certain provisions of Chapter 3, Title 77.
77-5-257. TVA jurisdiction.
77-5-259. Limitation for billing errors.

§ 77-5-201. Short title.

This article may be cited as the "Electric Power Association Law."

HISTORY:
Codes, 1942, § 5463; Laws, 1936, ch. 184.

Cross References —
Inapplicability to joint municipal electric power agencies organized under this article of requirements relative to obtaining certificates of public convenience and necessity, see § 77-3-11.

JUDICIAL DECISIONS

1. In general.

An amortization charge collected by an electric cooperative from its customers as a condition of receiving service, related to the amount of electricity consumed, but segregated from other charges for service and used exclusively for the payment of its long-term indebtedness, is income upon which a sales tax is collectible. Monaghan v. Pontotoc Electric Power Asso., 237 Miss. 883, 116 So. 2d 827, 1960 Miss. LEXIS 258 (Miss. 1960).

Members of an electric power association organized under the provisions of the Electric Power Association Law, and other persons living along the routes served by such association and readily accessible to its existing lines, who apply for membership in the association and agree to use electric energy supplied by the association are entitled to have such electric service furnished to them upon a nondiscriminatory basis. Capital Electric Power Asso. v. McGuffee, 226 Miss. 227, 83 So. 2d 837, 1955 Miss. LEXIS 628 (Miss. 1955), overruled in part, Tideway Oil Programs v. Serio, 431 So. 2d 454, 1983 Miss. LEXIS 2581 (Miss. 1983).

§ 77-5-203. Definitions.

The following terms whenever used or referred to in this article shall have the following meanings, unless a different meaning clearly appears from the context:

(a) "Corporation" shall mean a corporation formed under this article or operating under this article pursuant to Section 77-5-213.

(b) "Bonds" shall mean and include bonds, interim certificates or receipts, notes, debentures and all other evidences of indebtedness, either issued or the payment thereof assumed by the corporation.

(c) "Person" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships and bodies politic.

(d) "Energy" shall mean and include any and all electric energy no matter how or where generated or produced.

(e) "Acquire" shall mean and include construct, acquire by purchase, lease, devise, gift, or other mode of acquisition.

(f) "System" shall mean and include any plant, works, system, facilities, or properties, or parts thereof, together with all appurtenances thereto, used or useful in connection with the generation, production, transmission or distribution of energy.

(g) "Law" shall mean any act or statute, general, special or local of this state.

(h) "Federal agency" shall mean and include the United States of America, the President of the United States of America, Tennessee Valley Authority, the Federal Emergency Management Agency, the United States Department of Agriculture and its agencies, including the Rural Utilities Service, and any and all other authorities, agencies and instrumentalities of the United States of America, heretofore or hereafter created.

(i) "Improve" shall mean and include construct, reconstruct, improve, replace, extend, enlarge, alter, better or repair.

(j) "Board" shall mean the board of directors of a corporation formed under this article.

(k) "Member" shall mean and include each natural person signing the certificate of incorporation of a corporation and each person admitted to and retaining membership therein pursuant to law or its bylaws, and shall include a joint membership as defined by the corporation's bylaws.

(*l*) "Services" or "service" shall mean the sale or other disposition of energy, electrical appliances, wiring and equipment at the lowest cost consistent with sound economy, public advantage and the prudent conduct of the business of a corporation.

(m) "Certificate of incorporation" includes a certificate of incorporation or articles of incorporation.

(n) "Rate" means and includes every compensation, charge, deposit, contribution, fee, fare, toll, rental, cost and classification, or the formula or method by which such may be determined, or any of them, demanded, observed, charged, collected, avoided, or owed by a corporation for or relating to electric energy offered or provided by the corporation to the public or received by the corporation, and any rules, regulations, practices or contracts relating to any such compensation, charge, deposit, contribution, fee, fare, toll, rental, cost, or classification, including, but not limited to, any rules, regulations, practices or contracts relating to the disconnection of service to members or nonmember customers who have failed to pay for electric energy provided by the corporation.

HISTORY:
Codes, 1942, § 5465; Laws, 1936, ch. 184; Laws, 1938, ch. 252; Laws, 2016, ch. 387, § 1, eff from and after July 1, 2016.

§ 77-5-205. Formation of non-profit corporations authorized.

Three (3) or more natural persons may, by executing, filing and recording a certificate as hereafter provided in this article, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy by making electric energy available at the lowest cost consistent with sound economy and prudent management of the business of such corporations.

HISTORY:
Codes, 1942, § 5464; Laws, 1936, ch. 184.

RESEARCH REFERENCES

CJS.
29 C.J.S., Electricity §§ 44, 45.

§ 77-5-207. Contents of certificate of incorporation.

The certificate of incorporation shall state:

(a) The name of the corporation, which name shall include the words "electric power association" or "electric cooperative" and shall be such as to distinguish it from any other corporation organized and existing under the laws of this state.

(b) The location of its principal office and the post-office address thereof.

(c) The maximum number of directors, not less than three (3).

(d) The names and post-office addresses of the directors who are to manage the affairs of the corporation for the first year of its existence, or until their successors are chosen.

(e) The period of the duration of the corporation, which may be perpetual.

(f) The terms and conditions upon which persons shall be admitted to membership in the corporation.

The certificate of incorporation may also contain any provisions not contrary to law which the incorporators may choose to insert for the regulation of its business and for the conduct of the affairs of the corporation. It may also contain any provisions creating, defining, limiting or regulating the powers of the corporation, its directors and members.

HISTORY:
Codes, 1942, § 5466; Laws, 1936, ch. 184; Laws, 1938, ch. 252; Laws, 2014, ch. 332, § 1; Laws, 2016, ch. 387, § 2, eff from and after July 1, 2016.

§ 77-5-209. Prohibition on use of words "electric power association" and "electric cooperative."

The name of a corporation shall include either the words "electric power association" or "electric cooperative." The words "electric power association" and the words "electric cooperative" shall not be used in the corporate name of any corporation other than those formed pursuant to the provisions of this article or those operating under this article pursuant to Section 77-5-213. Whenever the words "electric power association" or "electric cooperative" or "nonprofit cooperative electric power association" appear in the laws of this state, such words shall refer to a corporation formed pursuant to and/or operating under the provisions of this article, including a corporation that uses either the words "electric power association" or "electric cooperative" in its name.

HISTORY:
Codes, 1942, § 5467; Laws, 1936, ch. 184; Laws, 2014, ch. 332, § 2; Laws, 2016, ch. 387, § 3, eff from and after July 1, 2016.

§ 77-5-211. Execution and filing of certificate of incorporation.

The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the corporation are to be conducted, who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before any officer authorized to take acknowledgments to deeds or other instruments. When so acknowledged, the certificate may be filed with the Secretary of State at any time thereafter within six (6) months of the date of the last acknowledgment. When submitted for filing, the Secretary of State shall accept and file the certificate and enter the date of filing in its records. The certificate of incorporation shall be effective as of the date on which the certificate of incorporation is filed with the Secretary of State, and the powers specified in the certificate of incorporation shall thereupon be vested in the corporation without further formalities.

HISTORY:
Codes, 1942, § 5468; Laws, 1936, ch. 184; Laws, 2016, ch. 387, § 4, eff from and after July 1, 2016.

§ 77-5-213. Chartering existing corporations under this article.

Any existing corporations under the laws of the State of Mississippi organized for the same general purposes as the corporations provided for by this article may be chartered under this article by filing with the secretary of state a certificate, approved by a majority of the board of the corporation, signed by the duly authorized officer or officers thereof, and acknowledged by the subscribers before any officer authorized to take acknowledgments to deeds or other instruments. Such certificate shall set forth the information required under Section 77-5-207 for corporations organizing under this article, shall declare the intention of the corporation to operate under this article, and shall be filed in the office of the secretary of state, who shall forthwith cause this certificate to be handled in the manner prescribed in Section 77-5-211 for original certificates of incorporation. The corporation under its existing name shall thereupon have all the powers and duties set forth in this article, but shall relinquish the powers under its former charter. No debt or other obligation, of or to the corporation, incurred prior to reincorporation under this section, shall be affected thereby. Any act, contract, or covenant heretofore done, made, entered into or performed by any corporation organized under any other law but reincorporating hereunder, is hereby expressly validated if such act, contract, or covenant would have been valid if done, made, entered into or performed under the terms hereof.

HISTORY:

Codes, 1942, § 5485; Laws, 1936, ch. 184.

§ 77-5-215. Amendment of certificate of incorporation.

A corporation may amend its certificate of incorporation to change its corporate name, to increase or reduce the number of its directors, or to change any other provisions therein. Notwithstanding any provisions of a corporation's certificate of incorporation to the contrary, if a corporation's certificate of incorporation provides that the period of duration of the corporation is a limited number of years, the corporation may amend its certificate to provide that the duration of the corporation is perpetual if such an amendment is authorized by the board of directors of the corporation pursuant to the affirmative vote of at least two-thirds (⅔) of the directors. Otherwise, and not withstanding any provisions of a corporation's certificate of incorporation to the contrary, a corporation may amend its certificate of incorporation if (a) the amendment is authorized by the board of directors of the corporation pursuant to the affirmative vote of at least two-thirds (⅔) of the directors, and (b) the amendment authorized by the board of directors is ratified by sixty percent (60%) of the corporation's members voting, at either the corporation's annual meeting or at a meeting of the members called for the special purpose of considering and voting on the amendment. Written notice of any meeting at which an amendment to the corporation's certificate of incorporation will be voted on by the members must be sent to the corporation's members at least thirty (30) days prior to the date of the meeting. The notice shall set forth the date, time, location and purpose of the meeting, and identify and describe the purpose of the amendment authorized by the corporation's board of directors. In the event an amendment is fully authorized in accordance with the foregoing, a certificate reflecting the amendment to the certificate of incorporation shall be prepared and executed by the president and by the secretary of the corporation who shall both affirm therein, under oath, that they have been authorized by the corporation to execute and file such certificate. Such certificate of amendment shall then be filed by the corporation in the Office of the Secretary of State, who shall forthwith cause this certificate to be handled in the manner prescribed in Section 77-5-211 for original certificates of incorporation; and the amendment of the corporation's certificate or articles of incorporation shall be effective as of the date on which the certificate of amendment is filed with the Secretary of State, and the powers specified in the certificate of amendment shall thereupon be vested in the corporation without further formalities.

HISTORY:
Codes, 1942, § 5483; Laws, 1936, ch. 184; Laws, 2014, ch. 333, § 1; Laws, 2016, ch. 387, § 5, eff from and after July 1, 2016.

§ 77-5-217. Consolidation of corporations.

Any two (2) or more corporations may enter into an agreement for the consolidation of such corporations. Such agreement, which may or may not require the dissolution of one or both of the corporations as provided in Section 77-5-219, shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, who shall be not less than three (3), the time of the initial meeting of the consolidated corporation and election of directors, and the name of at least three (3) persons to serve as directors until the election of directors at the initial meeting. To be effective, any such agreement must be (a) authorized by the board of directors of each corporation pursuant to the affirmative vote of at least two-thirds (⅔) of the directors of each corporation, and (b) ratified by sixty percent (60%) of each corporation's members voting, at either the corporation's annual meeting or at a meeting of the members called for the special purpose of considering and voting on the agreement for consolidation. If the agreement is so authorized and ratified, a joint application for approval of consolidation shall be filed by the consolidating corporations with the Mississippi Public Service Commission in the manner provided by Section 77-3-23. In no event shall another party be allowed to intervene in a proceeding initiated under this section for the purpose of seeking to obtain the certificated area, or any portion thereof, of any petitioning party. Upon approval of the application by the commission, the directors named in the consolidation agreement shall subscribe and acknowledge a certificate conforming substantially to an original certificate of incorporation, except that it shall be entitled and indorsed "certificate of consolidation of ________" (the blank space being filled in with the names of the corporations being consolidated) and shall state:

(a) The names of the corporations being consolidated.

(b) The name of the consolidated corporation.

(c) The other items required or permitted to be stated in a corporation's original certificate of incorporation.

Such certificate of consolidation shall be filed with the Secretary of State in the same manner as provided in Section 77-5-211. Upon such filing, the proposed consolidated corporation, under its designated name, shall be and constitute a body corporate with all the powers of a corporation as originally formed under the provisions of this article.

HISTORY:
Codes, 1942, § 5480; Laws, 1936, ch. 184; Laws, 2016, ch. 387, § 6, eff from and after July 1, 2016.

§ 77-5-219. Dissolution of corporation.

Upon complying with the requirements of Section 77-5-217 or 77-5-237, a corporation may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and indorsed "certificate of dissolution of ________" (the blank space being filled in with the name of the corporation) and shall state:

(a) Name of the corporation.

(b) The date of filing of the corporation's most recent certificate of incorporation.

(c) That the corporation elects to dissolve.

(d) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the officers of the corporation, who shall make and annex an affidavit stating that the corporation has complied with the requirements of Section 77-5-217 or Section 77-5-237 and that they have been authorized to execute and file such certificate.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be ratably distributed to the members thereof.

HISTORY:
Codes, 1942, § 5482; Laws, 1936, ch. 184; Laws, 2016, ch. 387, § 7, eff from and after July 1, 2016.

§ 77-5-221. Board of directors.

A corporation shall have a board of directors, and the powers of the corporation shall be vested in and exercised by such board of directors. The directors of the corporation, other than those named in a certificate of incorporation, shall be elected annually by the members entitled to vote. The initial directors of the corporation, including directors elected to succeed those named in a certificate of incorporation, shall be elected as follows: one-third (⅓) to be elected for a term of one (1) year, one-third (⅓) for a term of two (2) years, and one-third (⅓) for a term of three (3) years. Thereafter, all directors shall be elected for a term of three (3) years, or for such other term(s) as may be subscribed by the corporation's certificate of incorporation. Only members of the corporation shall be entitled to vote. The directors of a corporation must be members of the corporation. In order to qualify as a candidate for director of a corporation by petition, a candidate shall obtain not less than fifty (50) signatures of members of the corporation on whose board such candidate wishes to serve; however, a corporation shall be empowered, in its discretion, to adopt, through its bylaws, provisions which allow a person to qualify as a candidate for director by petition by obtaining less than fifty (50) signatures or by other less restrictive means. The directors shall be entitled to reimbursement for expenses incurred by them in the performance of their duties. In addition to reimbursement for expenses, the board may authorize compensation and benefits to be paid to and on behalf of such directors for the performance of their duties, including for the time it takes for them to travel to and from meetings and to board functions. The board shall elect periodically from its own number officers as prescribed by the corporation's bylaws. Directors may elect to attend the board meetings by telephone or video conference. All board meetings, unless in executive session, shall be open to any member of a corporation. Subject to the limitations below, any member or customer of a corporation shall be entitled to address the board at any regular meeting regarding any suggestions for better service, grievances or any other matter affecting the corporation. The board shall have the right to impose reasonable limitations upon the number of members or customers addressing any one (1) board meeting and the amount of time allotted to each presentation, and also to require members and customers to give the board reasonable advance notice of their desire to address the board so that the board may investigate and be able to respond to the presentation.

HISTORY:

Codes, 1942, § 5469; Laws, 1936, ch. 184; Laws, 1966, Ex Sess, ch. 34, § 1; Laws, 1984, ch. 332; Laws, 1989, ch. 454, § 1; Laws, 2016, ch. 387, § 8, eff from and after July 1, 2016.

JUDICIAL DECISIONS

1. In general.

When a corporate employer knew that some of its directors were ineligible to hold office and took no action to remove them, the actions of a majority of de facto directors were binding upon the corporation insofar as increases in salary to employees, health policies, retirement policies, expense allowances, and a deferred compensation agreement were concerned. Capital Electric Power Asso. v. Phillips, 240 So. 2d 133, 1970 Miss. LEXIS 1271 (Miss. 1970).

§ 77-5-223. Powers of board of directors.

The board of a corporation shall have power to do all things necessary or convenient in conducting the business of the corporation, including, but not limited to:

(a) To adopt and amend bylaws for the management and regulation of the affairs of the corporation. The bylaws of a corporation may make provisions, not inconsistent with law or its certificate of incorporation, regulating the admission, withdrawal, suspension or expulsion of members; the transfer of membership; the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the numbers, times and manner of choosing, qualifications, terms of office, official designations, powers, duties and compensation of its officers; defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings; the date of the annual meeting and the giving of notice thereof and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the corporation is to render service to its members; the disposition of the revenues and receipts of the corporation; regular and special meetings of the board and the giving of notice thereof; and such other matters as the board may deem appropriate or desirable.

(b) To appoint agents and employees and to fix their compensation and benefits and the compensation and benefits of the officers of the corporation.

(c) To execute all instruments or documents, or to delegate the execution thereof.

(d) To delegate to one or more of the directors or to the officers, agents and employees of a corporation such powers and duties as it may deem proper.

(e) To make its own rules and regulations as to its procedure.

(f) To appoint such committees as the board shall in its judgment see fit, which committees may consist of members or nonmembers of either the board or the corporation.

(g) To cause the corporation to reimburse directors for expenses incurred by them in the performance of their duties and to fix compensation and benefits to be paid to and on behalf of directors for the performance of their duties.

HISTORY:

Codes, 1942, § 5470; Laws, 1936, ch. 184; Laws, 2016, ch. 387, § 9, eff from and after July 1, 2016.

JUDICIAL DECISIONS

1. In general.

A quorum may be constituted in an association by both the members present and those voting by proxy. McNair v. Capital Electric Power Asso., 324 So. 2d 234, 1975 Miss. LEXIS 1589 (Miss. 1975).

The right of members of a nonprofit electric power association to vote by proxy derives directly from the charter, does not require implementation through the adoption of bylaws, and may not be impaired by action of the board of directors. Dixie Electric Power Asso. v. Hosey, 208 So. 2d 751, 1968 Miss. LEXIS 1421 (Miss. 1968).

§ 77-5-225. Membership in corporation.

Except as hereinafter provided, the corporate purpose of a corporation shall be to render service to its members only. Any person may become and remain a member if such person shall use energy supplied by such corporation and shall comply with the terms and conditions in respect to membership contained in the bylaws of such corporation, which terms and conditions shall be nondiscriminatory. Any person who shall agree to use energy supplied by the corporation from an existing line or from a line the construction of which has been authorized or commenced by the corporation may be admitted to membership in the corporation prior to such use upon complying with the other terms and conditions with respect to membership contained in the certificate of incorporation or in the bylaws. The membership fee of the corporation shall be fixed by the board of directors. Should the corporation acquire any electric facilities already dedicated or devoted to the public use it may, for the purpose of continuing existing service and avoiding hardship, continue to serve the persons served directly from such facilities at the times of such acquisition without requiring that such persons become members. In no event shall the number of such nonmembers served exceed forty-nine percent (49%) of the total number of persons served by the corporation. Such nonmember customers shall have the right to become members upon nondiscriminatory terms.

HISTORY:

Codes, 1942, § 5472; Laws, 1936, ch. 184; Laws, 2016, ch. 387, § 10, eff from and after July 1, 2016.

JUDICIAL DECISIONS

1. In general.

Where a power association had refused to connect landowner's property with electric service merely because the landowner had sued the power association for damages arising out of the wrongful cutting of her timber, punitive damages were properly awarded to the landowner. Capital Electric Power Asso. v. Hinson, 230 Miss. 311, 92 So. 2d 867, 1957 Miss. LEXIS 374 (Miss. 1957).

The provisions of this statute were designed to make certain the accomplishment of the purpose for which such corporations are organized by making electric energy available upon a nondiscriminatory basis to the inhabitants of the areas which they propose to serve at the lowest cost consistent with sound economy and prudent management of the business and such provisions are necessary to justify the delegation to such corporations of the power of eminent domain. Capital Electric Power Asso. v. McGuffee, 226 Miss. 227, 83 So. 2d 837, 1955 Miss. LEXIS 628 (Miss. 1955), overruled in part, Tideway Oil Programs v. Serio, 431 So. 2d 454, 1983 Miss. LEXIS 2581 (Miss. 1983).

This section which provides that the corporate purpose of each corporation formed shall be to render service to its members only, must be read with other provisions of this section, including the provision that any person may be a member of the corporation if such person shall use energy supplied by the corporation and shall comply with the terms and conditions in respect to membership contained in the bylaws of such corporation and that any person agreeing to use energy supplied by the corporation from an existing line, may be admitted to the membership in the corporation prior to such use upon complying with the other terms and conditions with respect to membership contained in the certificate of incorporation and bylaws. Capital Electric Power Asso. v. McGuffee, 226 Miss. 227, 83 So. 2d 837, 1955 Miss. LEXIS 628 (Miss. 1955), overruled in part, Tideway Oil Programs v. Serio, 431 So. 2d 454, 1983 Miss. LEXIS 2581 (Miss. 1983).

RESEARCH REFERENCES

ALR.

Duty of mutual association, nonprofit organization, or co-operative to furnish utilities service. 56 A.L.R.2d 413.

§ 77-5-227. Certificate of membership; voting.

A corporation may issue to its members certificates of membership in such form as the bylaws may prescribe. Each member shall be entitled to only one (1) vote on each matter submitted to a vote at the meetings of the members of the corporation, but voting by proxy, by mail or electronically may be provided for in the bylaws.

HISTORY:

Codes, 1942, § 5471; Laws, 1936, ch. 184; Laws, 1938, ch. 252; Laws, 2014, ch. 331, § 1, eff from and after passage (approved Mar. 13, 2014).

§ 77-5-229. General powers of corporation.

A corporation is hereby vested with all power necessary or requisite for the accomplishment of its corporate purpose, and no enumeration of particular powers hereby granted in this article shall be construed to impair any general grant of power herein contained, or to limit any such grant to a power or powers of the same class or classes as those so enumerated.

HISTORY:
Codes, 1942, § 5473; Laws, 1936, ch. 184; Laws, 2016, ch. 387, § 11, eff from and after July 1, 2016.

JUDICIAL DECISIONS

1. In general.
The Natchez Trace Electric Power Association is not a political subdivision of the state, and since it is neither created directly by the state nor administered by individuals who are responsible to public officials or to the general electorate, it possesses neither of the characteristics one of which the NLRB requires of an entity before it can qualify for the exemption as a "political subdivision" under the National Labor Relations Act. NLRB v. Natchez Trace Electric Power Asso., 476 F.2d 1042, 1973 U.S. App. LEXIS 10404 (5th Cir. 1973).

§ 77-5-231. Specific powers of corporation.

(1) A corporation shall have power to do any and all acts or things necessary or convenient for carrying out the purposes for which it was formed, including, but not limited to:

(a) To sue and be sued.

(b) To have a seal and alter the same at pleasure.

(c) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

(d) To render service and to acquire, own, operate, maintain and improve a system or systems within the state and in counties adjacent thereto.

(e) To pledge all or any part of its revenues and to mortgage or otherwise incumber all or any part of its property for the purpose of securing the payment of the principal of and interest on any of its bonds or other obligations.

(f) To use any right-of-way, easement or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of a system, granted by the state or any political subdivision thereof, provided that the governing body of such political subdivision shall consent to such use, and to have and exercise the power of eminent domain in the manner provided by the condemnation laws of this state for acquiring private property for public use, such right to be paramount except as to the property of the state or of any political subdivision thereof.

(g) To accept gifts or grants of money, property, real or personal, from any person, municipality or federal agency and to accept voluntary and uncompensated services.

(h) To make any and all contracts necessary or convenient for the full exercise of the powers in this article granted, including, but not limited to, contracts with any person, federal agency, state agency or municipality for the purchase, transfer or sale of energy and/or the acquisition of all or any part of any system, and in connection with any such contract to stipulate and agree to such covenants, terms and conditions as the board may deem appropriate, including covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices and the manner of disposing of the revenues of the system operated and maintained by the corporation.

(i) To sell, lease, or otherwise dispose of all or any part of its property, subject however to the provisions of Section 77-5-237.

(j) To contract debts, borrow money and to issue, assume or indorse the payment of bonds or other evidences of indebtedness.

(k) To fix, maintain and collect fees, rents, tolls and other charges for services rendered.

(*l*) To acquire and to sell, lease, distribute and generally to deal in electrical and plumbing appliances, apparatus, machinery and equipment for the purpose of and in connection with the promotion of the sale of electric energy to its customers; to assist its customers to purchase or otherwise obtain such appliances, apparatus, machinery and equipment; to assist its customers to wire their premises and to install therein such appliances, apparatus, machinery and equipment; to acquire and to indorse, sell, pledge, hypothecate and dispose of notes, bonds and other obligations of its customers in carrying out the purposes expressed in this paragraph.

(m) To maintain, in any reasonable manner and in its discretion, its easements and rights-of-way and adjacent property within a reasonable or necessary distance of its energy facilities free of vegetation, trees, limbs or other impediments in order to foster the integrity and reliability of the corporation's electric energy system or the safety of the public or its members, agents or employees.

(n) To condemn any land, easements, or rights-of-way, either on, under, or above the ground, as the association may deem necessary for any purposes mentioned in this article other than the purposes described in subsection (2) of this section, and such property or interest in such property may be so acquired whether or not the same is owned or held for public use by corporations, associations or persons having the power of eminent domain, or otherwise held or used for public purposes. Such power of condemnation may be exercised in the mode or method of procedure prescribed by Chapter 27, Title 11, Mississippi Code of 1972, or in the mode or method of procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain. Where condemnation proceedings become necessary, the judge of the circuit court or the judge of the county court in counties where the county court exists, in which such proceedings are filed, shall, upon application of the authority, and upon the deposit in court, to the use of the person or persons lawfully entitled thereto, of such amount as the judge may deem necessary to assure just compensation, order that the right of possession shall issue immediately or as soon and upon such terms as the judge, in his discretion, may deem just and proper. Upon application of the parties in interest other than the corporation, the judge may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceedings.

(o) To operate across state lines.

(p) To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

(2) Any generation and transmission electric corporation created under this article may undertake economic development activities, whether directly, indirectly, or in conjunction with other entities, including activities such as providing capital, or investment in or acquisition and development of business or industrial sites and the necessary infrastructure or services needed to attract new or existing businesses or industry, to create or maintain employment opportunities, or otherwise to positively impact its service territory or in some manner promote the sale of electric energy.

HISTORY:

Codes, 1942, § 5474; Laws, 1936, ch. 184; Laws, 1938, chs. 251, 252; Laws, 2013, ch. 466, § 2; Laws, 2015, ch. 360, § 1; Laws, 2016, ch. 387, § 12, eff from and after July 1, 2016.

JUDICIAL DECISIONS

1. In general.

Dismissal of an eminent domain proceeding under Miss. Code Ann. § 11-27-15 was properly denied because owners were unable to show that an electric association's taking was not for public use, and any incidental benefit to surrounding landowners did not defeat the taking of the owners' property; the association wanted to construct a power line to supply its customers with adequate voltage. Knight v. S. Miss. Elec. Power Ass'n, 943 So. 2d 81, 2006 Miss. App. LEXIS 667 (Miss. Ct. App. 2006).

The Mississippi Electric Power Association Act, Miss. Code Ann. § 77-5-201 et seq., contains a clear expression of legislative intent that member corporations be prohibited from acquiring an interest in business enterprises not associated with the delivery of electric power. Tallahatchie Valley Elec. Power Ass'n v. Miss. Propane Gas Ass'n, 812 So. 2d 912, 2002 Miss. LEXIS 5 (Miss. 2002).

The Natchez Trace Electric Power Association is not a political subdivision of the state, and since it is neither created directly by the state nor administered by individuals who are responsible to public officials or to the general electorate, it possesses neither of the characteristics one of which the NLRB requires of an entity before it can qualify for the exemption as a "political subdivision" under the National Labor Relations Act. NLRB v. Natchez Trace Electric Power Asso., 476 F.2d 1042, 1973 U.S. App. LEXIS 10404 (5th Cir. 1973).

Where a right of way was conveyed to the state highway commission for highway purposes, and electric power company constructed power lines on the highway right of way, the landowner could recover damages on the ground that private property should not be taken or damaged for public use except on due compensation. Berry v. Southern Pine Electric Power Asso., 222 Miss. 260, 76 So. 2d 212, 1954 Miss. LEXIS 644 (Miss. 1954).

RESEARCH REFERENCES

ALR.

Correlative rights of dominant and servient owners in right of way for electric line. 6 A.L.R.2d 205.

Eminent domain: review of electric power company's location of transmission line for which condemnation is sought. 19 A.L.R.4th 1026.

Liability of owner of wires, poles, or structures struck by aircraft for resulting injury or damage. 49 A.L.R.5th 659.

Am. Jur.

7B Am. Jur. Legal Forms 2d, Electricity, Gas, and Steam §§ 95:20 et seq. (particular agreements).

7B Am. Jur. Legal Forms 2d, Electricity, Gas, and Steam §§ 95:401 et seq. (optional provisions).

9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 71 et seq. (tort liability; electric wires and poles).

9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 11-18 (rights of way and eminent domain).

§ 77-5-233. Operations outside of state authorized.

To the extent necessary in the judgment of its board to make effective the powers conferred by this article, a corporation shall continue to have the power to acquire, construct, own, invest in, operate, maintain, and/or improve generating and/or transmission assets.

HISTORY:

Codes, 1942, § 5475; Laws, 1936, ch. 184; Laws, 2016, ch. 387, § 13, eff from and after July 1, 2016.

§ 77-5-235. Rates; limitations on disconnections; attaching entities.

(1) A corporation shall have the power to fix, adjust, charge, collect and pay reasonable rates for electric energy and other facilities, supplies, equipment, products, commodities, goods and services furnished by, offered by or furnished to the corporation. All rates of a corporation formed or operating under the provisions of this article shall be established by the corporation's board and shall not be regulated by the Mississippi Public Service Commission.

(2) Notwithstanding the foregoing, a corporation shall be subject to commission regulations that limit disconnections of service during freeze warnings or excessive heat warnings issued by the National Weather Service, limit disconnections of service in life-threatening situations certified by a medical doctor, or establish initial deposit requirements for certified victims of domestic violence.

(3) Nothing herein shall be construed to impair the Mississippi Public Service Commission's jurisdiction and authority, if any, to require corporations to establish, offer or participate in energy efficiency or net metering programs, but in no event shall the commission set or establish the level of expenditures, compensation or credits associated with a corporation's energy efficiency, net metering or other programs.

(4) As used in this section, "attaching entity" means a cable television system or provider of telecommunications service. Nothing in this article shall be construed to impair the Mississippi Public Service Commission's jurisdiction and authority that existed prior to July 1, 2016, if any, with regard to a

corporation's rates, terms and conditions for attachments by an attaching entity to poles owned or controlled by the corporation. A corporation may only deny an attaching entity access to its owned or controlled poles on a nondiscriminatory basis if there is insufficient capacity or for reasons of safety and reliability and if the attaching entity will not resolve the issue. Nothing in this subsection shall be construed to prohibit a corporation from requiring an attaching entity to enter into a pole attachment agreement consistent with this section.

(5) A corporation's rates for energy furnished or offered by the corporation shall be sufficient at all times to pay all operating and maintenance expenses necessary or desirable for the prudent conduct and operation of its business and to pay the principal of and interest on such obligations as the corporation may have issued and/or assumed in the performance of the purpose for which it was formed. The revenues and receipts of a corporation shall first be devoted to such operating and maintenance expenses and to the payment of such principal and interest and thereafter to such reserves for improvement, new construction, depreciation and contingencies as the board may from time to time prescribe. Revenues and receipts not needed for these purposes shall be returned to the members by such means as the board may decide, including through the reimbursement of membership fees, the implementation of general rate reductions, the limitation or avoidance of future rate increases, or such other means as the board may determine.

HISTORY:

Codes, 1942, § 5481; Laws, 1936, ch. 184; Laws, 2016, ch. 387, § 14, eff from and after July 1, 2016.

JUDICIAL DECISIONS

1. In general.

An amortization charge collected by an electric cooperative from its customers as a condition of receiving service, related to the amount of electricity consumed, but segregated from other charges for service and used exclusively for the payment of its long-term indebtedness, is income upon which a sales tax is collectible. Monaghan v. Pontotoc Electric Power Asso., 237 Miss. 883, 116 So. 2d 827, 1960 Miss. LEXIS 258 (Miss. 1960).

RESEARCH REFERENCES

Am. Jur.

15 Am. Jur. Proof of Facts 2d 125, Wrongful Termination of Electric Service.

Practice References.

Robert L. Hahne, Accounting for Public Utilities (Matthew Bender).

§ 77-5-237. Disposing of corporate property.

(1) A corporation may sell, lease, exchange or otherwise dispose of all, or substantially all, of its property only if all of the following conditions are satisfied:

(a) The proposed purchaser shall file with the board of directors of the corporation and the Public Service Commission a disclosure statement containing the information required by Schedule 14D-1, as such schedule is described in the United States Securities Exchange Act of 1934, as amended.

For purposes of this section, references in Schedule 14D-1 to "tender offer," "bidder," "subject company" and "securities of the subject company" shall be deemed to mean the proposed transaction, the proposed purchaser, the corporation and the property of the corporation, respectively.

(b) The proposed purchaser shall file with the board of directors and the Public Service Commission the offer to acquire all, or substantially all, of the property of the corporation, and any amendments thereto, which shall be contained in a written proposal and sets forth completely the terms and conditions of the proposed transaction. The offer shall provide: (i) for the full payment of equity and capital credits to all past and present members of the corporation, on an equitable basis; and (ii) for the payment or assumption of the total debt of the corporation by the purchaser or the payment of the total debt by the board of directors of the corporation, and an agreement to comply with the terms and conditions of any contract or other agreement, other than total debt paid out of the purchase price, to which the corporation is a party or by which the corporation is bound. Should the offer be accepted, the board of directors shall be responsible for assuring that any debts to be paid by the corporation pursuant to the offer of purchase are paid out of the purchase price, and all funds or any other forms of payment are equitably distributed within one hundred twenty (120) days to all past and present members of the corporation according to the amount of interest such members have in such corporation.

(c)(i) When the proposed purchase price is at least equal to two-thirds (⅔) of the members' equity plus total debt the board of directors shall be obligated to submit the proposed offer to the membership for a vote, unless action is pending or injunctions issued pursuant to subsection (2). Members' equity shall consist of the appraised value of the assets to be disposed of, less total debt.

(ii) When the proposed purchase price is not at least equal to two-thirds (⅔) of the members' equity plus total debt the board of directors shall not submit such offer of purchase unless the board of directors, by a two-thirds (⅔) affirmative vote, determines that good and sufficient reasons exist so that the submission of an offer of lesser value would be in the best interest of the membership. Members' equity shall consist of the appraised value of the assets to be disposed of, less total debt.

(d) The board of directors of the corporation and the proposed purchaser shall mutually employ a recognized, qualified impartial firm to make an appraisal of the value of the members' equity in the tangible and intangible assets to be disposed of and a rate study to determine the effect of the proposed transaction on the rates for electricity to be paid by members. Within fifteen (15) days after it has been determined that the purchaser and the corporation cannot mutually agree on an appraiser, the board of directors of the corporation shall submit, to the Public Service Commission, a list of five (5) independent, qualified individuals or firms recognized with experience in the appraisal of electric utility systems. The purchaser shall have ten (10) days after submission to strike up to four (4) of the appraisers submitted. If more than one (1) appraiser remains on the list, the Public Service Commission shall, within ten (10) days of receipt of such list, notify the corporation and the proposed purchaser of the name of the appraiser selected to perform the appraisal and rate study required herein. The proposed purchaser shall place into escrow the sum of Fifty Thousand Dollars ($50,000.00) at the time the offer is made. Such escrowed funds shall be released to pay the incurred costs of such studies, with any remainder being returned to the purchaser.

(e)(i) When the conditions set forth in subsections (1)(a) through (1)(d) have been satisfied, and no action is pending or injunction issued pursuant to subsection (2), the corporation shall, within one hundred twenty (120) days, but not sooner than sixty (60) days, call a meeting of the members for purposes of considering and voting on the proposed transaction, upon at least twenty (20) days' notice of such meeting to the members given in accordance with applicable law and the charter of incorporation and bylaws of the corporation. The notice shall set forth the date, time, location and purpose of meeting, a description of the proposed transaction including the results of the studies required by subsection (1)(d), proxy material and any other information required by the bylaws of the corporation.

(ii) When the conditions set forth in subsections (1)(a) and (1)(b) of this section have been satisfied, no court action is pending under the provisions of this section and the board of directors of the corporation has not submitted the offer to the members, upon the expiration of one hundred twenty (120) days but not more than two hundred forty (240) days, thirty percent (30%) of the membership of the corporation may petition the board of directors to submit the offer to the members. Upon receipt of such petition, the corporation shall, within one hundred twenty (120) days, but not sooner than sixty (60) days, call a meeting of the members for purposes of considering and voting on the proposed transaction, upon at least twenty (20) days' notice of such meeting to the members given in accordance with applicable law and the charter of incorporation and bylaws of the corporation. The notice shall set forth the date, time, location and purpose of meeting, a description of the proposed transaction including the results of the studies required by subsection (1)(d), proxy material and any other information required by the bylaws of the corporation.

(f) The proposed transaction must be approved by the affirmative vote of three-fifths (3/5) of all the members. Voting shall be in person or by proxy. The tabulation of the member vote shall be attested to by an independent accounting firm engaged to perform that accounting function.

(2) If the board of directors determines that any of the terms and conditions of the proposed transaction are unreasonable or unfair to the members and if the proposed purchaser is unwilling to amend the offer to make the terms and conditions of the offer reasonable and fair to the members, then the board of directors may institute a proceeding in the chancery court of the county where the corporation's principal office is located to enjoin the proposed

transaction. If the court determines that the terms and conditions of the proposed offer are unreasonable or unfair to the members, it shall permanently enjoin the proposed transaction, unless the offer is amended to make the terms and conditions reasonable and fair to the members. If the court determines that the terms and conditions of the offer are reasonable and fair to the members, the court shall order the corporation to submit the proposed transaction to the members for a vote. The court may appoint one or more independent experts to review the terms and conditions of the proposed transaction and make a recommendation to the court. Such independent experts shall have the powers described in the order appointing them, or in any amendment thereto. Nothing in this subsection shall be construed as prohibiting or limiting the rights of the members of the corporation from acting pursuant to subsection (1)(e)(ii) of this section.

(3) Any party which, in providing the disclosure information required by subsection (1)(a) above, makes false or misleading statements concerning material facts or omits information which makes the information disclosed misleading shall be liable to the members of the corporation for actual damages.

(4) Purchasers, affiliates, cooperatives or agents thereof shall conduct a diligent investigation to secure all material information reasonably available and any purchaser, affiliate, cooperative or agent thereof which, in making any communication with members of the corporation, written or oral, knowingly makes false or misleading statements concerning material facts or omits information which makes the information misleading may be liable to the injured party for damages incurred thereby.

(5) It shall be deemed a breach of the fiduciary duty owed by a director of the corporation to the corporation and its members for any director of the corporation, directly or indirectly, to accept any payment, compensation, remuneration or benefit paid by, or on behalf of, any purchaser or affiliate of a purchaser except for the benefits received by all members of the corporation on a nondiscriminatory basis.

(6) The board of directors may, without authorization by the members, sell, mortgage, lease or otherwise encumber or dispose of (a) any of its property which, in the judgment of the board, is neither necessary nor useful in operating and maintaining the corporation's system and which in any one (1) year shall not exceed ten percent (10%) in value of all of the property of the corporation, or (b) merchandise. The board of directors of the corporation, without authorization by the members thereof, shall also have full power and authority upon the affirmative vote of two-thirds (⅔) of the members constituting the full board to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the corporation, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of directors upon the affirmative vote of two-thirds (⅔) of the members constituting the full board shall determine, to secure any

indebtedness of the corporation to the United States of America or any instrumentality or agency thereof, or to a national financing institution, organized on a cooperative plan for the purpose of financing its members' programs, projects and undertakings, in which the corporation holds membership.

(7) During the first year of the existence of a corporation its property shall not be sold or leased, wholly or in part, unless the sale or lease shall in addition to any approval required by subsections (1) and (2) of this section be approved by a majority of all persons who have signed customers' survey forms or otherwise signified in writing their intention to become members of the corporation. All such persons shall be deemed to have a beneficial interest in the affairs of the corporation insofar as the sale or lease of the property of the corporation is concerned and the members of the board are hereby declared to be the trustees of such persons with respect thereto.

HISTORY:

Codes, 1942, § 5476; Laws, 1936, ch. 184; Laws, 1938, ch. 252; Laws, 1970, ch. 423, § 1; Laws, 1989, ch. 454, § 2, eff from and after passage (approved March 24, 1989).

Federal Aspects—

Securities Exchange Act of 1934, see 15 USCS §§ 78a et seq.

JUDICIAL DECISIONS

1. In general.

This statute does not grant discretion to the board of directors, who are trustees for the purposes of the sale, to withhold or to submit an offer of purchase dependent upon a price satisfactory to them, and there was no violation of fiduciary duty where the board did not engage in negotiations with the purchase for a higher price. McNair v. Capital Electric Power Asso., 324 So. 2d 234, 1975 Miss. LEXIS 1589 (Miss. 1975).

§ 77-5-239. Power of corporation to incur obligations and liabilities, borrow money, issue notes, bonds, etc.

A corporation shall have the power to incur obligations and liabilities, borrow money, issue notes, bonds, certificates of indebtedness and other obligations, and to enter into contracts of guaranty.

HISTORY:

Codes, 1942, § 5477; Laws, 1936, ch. 184; Laws, 1970, ch. 423, § 2; Laws, 2016, ch. 387, § 15, eff from and after July 1, 2016.

Cross References —

Law of negotiable instruments under Uniform Commercial Code, see § 75-3-101.

§ 77-5-241. Interest rates.

Any note, bond, or other indebtedness issued by a corporation may bear such interest rate or rates as may be determined by the board of directors of the corporation.

HISTORY:

Codes, 1942, § 5477.5; Laws, 1970, ch. 423, § 3; Laws, 2016, ch. 387, § 16, eff from and after July 1, 2016.

§ 77-5-243. Power to execute and deliver instruments to create security interest in corporation property.

A corporation shall have the power to execute and deliver any of one or more mortgages, deeds of trust, financing statements, or other instruments to secure debt covering, or to create by other means a security interest in, any or all of the real or personal property assets, rights, privileges, licenses, franchises, and permits of the corporation or any interest therein, as well as the revenues therefrom, whether acquired or to be acquired wherever situated, for the purpose of securing the payment or performance of any one or more contracts, notes, bonds, or other obligations of the corporation.

HISTORY:
Codes, 1942, § 5478; Laws, 1936, ch. 184; Laws, 2016, ch. 387, § 17, eff from and after July 1, 2016.

§ 77-5-245. Purchase and cancellation of bonds.

A corporation shall have power out of any funds available therefor to purchase any bonds issued by it at a price not exceeding the principal amount thereof and accrued interest thereon. All bonds so purchased shall be canceled.

HISTORY:
Codes, 1942, § 5479; Laws, 1936, ch. 184.

§ 77-5-247. Monies of corporations.

All monies of a corporation from whatever source derived, shall be deposited or prudently invested in one or more banks, trust companies, or financial institutions, as may be approved by the board of directors, and, if the corporation shall so require, each of such accounts shall be continuously secured by a pledge of direct obligations of the United States of America or of the State of Mississippi having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account or accounts, or otherwise insured by the Federal Deposit Insurance Corporation by whatever mechanism the corporation's board may deem appropriate.

Such securities shall either be deposited with the corporation or held by a trustee or agent satisfactory to the corporation. In lieu of any such pledge or such securities, said deposits may be secured by a surety bond or bonds which shall be in form, sufficiency and substance satisfactory to the corporation.

HISTORY:
Codes, 1942, § 5484; Laws, 1936, ch. 184; Laws, 2016, ch. 387, § 18, eff from and after July 1, 2016.

§ 77-5-249. Corporations and their property subject to taxation.

A corporation and its property shall be taxed and assessed in accordance with the laws of the State of Mississippi.

HISTORY:
Codes, 1942, § 5486; Laws, 1936, ch. 184; Laws, 2016, ch. 387, § 19, eff from and after July 1, 2016.

§ 77-5-251. Construction of article; article complete in itself.

This article is to be liberally construed, and the enumeration of any object, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things.

This article is complete in itself and shall be controlling. The provisions of any other law, general, special or local, except as provided in this article, shall not limit or restrict the powers of any corporation formed under this article.

HISTORY:

Codes, 1942, §§ 5487, 5489; Laws, 1936, ch. 184.

§ 77-5-253. Annual financial and compliance audits.

All corporations created under this article shall submit annual financial and compliance audits to the Mississippi Public Service Commission and Public Utilities Staff for review and archiving.

HISTORY:

Laws, 1989, ch. 454, § 3; Laws, 2009, ch. 546, § 20; Laws, 2016, ch. 387, § 20, eff from and after July 1, 2016.

§ 77-5-255. Mediation of disputes between members or customers and electric power associations.

(1) Subject to the limitations herein, the Public Service Commission shall investigate, review and mediate any dispute which qualifies as specified herein between a member or customer and the corporation of which he is a member. The minimum amount of a dispute which shall qualify for mediation under this section shall be: (a) One Thousand Dollars ($1,000.00) which has accumulated over the past twelve (12) months or (b) ten percent (10%) of the cumulative previous twelve (12) months' billing, whichever shall be the lesser. Investigation, review and mediation shall be commenced upon the filing of a petition with the Public Service Commission by a corporation or a member or customer of a corporation; provided, however, that the Public Service Commission shall not commence any proceedings nor commence any investigation, review or mediation of any such dispute until it has first been notified by both the member and the corporation of their consent to the investigation, review and mediation. The Public Service Commission also shall not commence any proceedings nor commence any investigation, review or mediation pursuant to such petition if at the time of filing the petition suit has been filed in any court of this state or of the United States with regard to the subject matter of the dispute and in which such corporation and member or customer are parties. Any such petition shall be immediately dismissed if any such suit is filed after filing of the petition with the commission.

(2) In any mediation proceedings commenced under the provisions of this section, the Public Service Commission may, by order entered on its minutes and delivery of a certified copy thereof to the corporation, direct the corporation and the member or customer to provide the Public Service Commission with

copies of all statements, accounts and reports concerning the dispute which the Public Service Commission may require. The Public Service Commission is further authorized to conduct and may conduct, or request the Public Utilities Staff to conduct, investigation and mediation of the dispute and may negotiate with the corporation and the member or customer for the resolution thereof. In every mediation proceeding under this section the Public Service Commission may perform only such duties relating to the dispute as it deems reasonable and likely to result in settlement of the dispute between the corporation and the member or customer.

(3) Participation and continued participation in any investigation, proceeding, negotiation or mediation under the provisions of this section shall be voluntary by the corporation and the member or customer.

HISTORY:

Laws, 1989, ch. 454, § 4; Laws, 2016, ch. 387, § 21, eff from and after July 1, 2016.

§ 77-5-256. Generation and transmission cooperative; definitions; amendment of certificate of incorporation; board of directors; corporate purpose; applicability of certain provisions of Chapter 3, Title 77.

(1) As used herein, the phrase "generation and transmission cooperative" or "G&T cooperative" shall mean a corporation that is formed under this article for the primary purpose of providing wholesale power supply to its members as a wholesale power supply cooperative, and whose membership is comprised of a group of corporations that are formed under this article and have certificates of public convenience and necessity providing the exclusive right and authority to provide retail electric service within their respective certificated service territories.

(2) The following additional provisions apply to G&T cooperatives:

(a) A G&T cooperative may amend its certificate of incorporation to change its corporate name, to increase or reduce the number of its directors, or to change any other provisions therein. Notwithstanding any provisions of a G&T cooperative's certificate of incorporation to the contrary and notwithstanding any provisions of Section 77-5-215, a G&T cooperative may amend its certificate of incorporation if the amendment is authorized by the board of directors of the G&T cooperative pursuant to the affirmative vote of at least two-thirds (⅔) of the directors. In the event an amendment is authorized in accordance with the foregoing, a certificate reflecting the amendment to the certificate of incorporation shall be prepared and executed by the president and by the secretary of the G&T cooperative who shall both affirm therein, under oath, that they have been authorized by the G&T cooperative to execute and file such certificate. Such certificate of amendment shall then be filed by the G&T cooperative in the Office of the Secretary of State, who shall forthwith cause this certificate to be handled in the manner prescribed in Section 77-5-211 for original certificates of incorporation; and the amendment of the G&T cooperative's certificate or articles of incorporation shall be effective as of the date on which the certificate of amendment is filed with the Secretary of State, and the powers specified in the certificate of amendment shall thereupon be vested in the G&T cooperative without further formalities.

(b) A G&T cooperative shall have a board of directors, and the powers of the G&T cooperative shall be vested in and exercised by such board of directors. The directors of the G&T cooperative, other than those named in a certificate of incorporation, shall be elected by the members of the G&T cooperative. The board of directors shall include two (2) directors from each member of the G&T cooperative, with one of those directors being the general manager or chief executive of the member and the other being a sitting director on the member's board of directors. The bylaws of a G&T cooperative may also provide for up to three (3) at-large directors to be elected by sitting members of the board of directors, with such qualifications to be an at-large director within the discretion of the board of directors. All directors shall be elected for a term of three (3) years, or for such other term(s) as may be prescribed by the corporation's certificate of incorporation. The directors shall be entitled to reimbursement for expenses incurred by them in the performance of their duties. In addition to causing the G&T cooperative to reimburse directors for expenses, the board may authorize compensation and benefits to be paid to and on behalf of such directors for the performance of their duties including for the time it takes for them to travel to and from meetings and to board functions. The board shall elect periodically from its own number officers as prescribed by the corporation's bylaws. Directors may elect to attend the board meetings by telephone or video conference. The board may set procedures by which its meetings will be conducted and rule will be by majority vote except where a super majority is required by its articles of incorporation or bylaws.

(c) The corporate purpose of a G&T cooperative shall be to render service primarily to its members. After initial incorporation, any corporation formed or operating under this article may become and remain a member if such corporation is accepted into membership by a unanimous vote of the board of directors and complies with the terms and conditions in respect to membership contained in the bylaws of such G&T cooperative. The membership fee of the G&T cooperative shall be fixed by the board of directors. A G&T cooperative may provide capacity, energy, or transmission to a regional transmission market, and independent system operator, or other similar organized market, to the extent provision of such service is expected to provide a direct or indirect benefit to the G&T cooperative's membership. A G&T cooperative has the power to operate across state lines.

(d) A G&T cooperative has the power to provide support to its members in their operations, including, but not limited to, accounting, legal, regulatory, engineering, and other areas in which its members determine it is desirable for the generation and transmission corporation to house certain expertise.

(e) These provisions are in addition to those applicable to corporations formed or operating under this article that are not G&T cooperatives and are not to be construed as limitations on the powers or authorities of G&T cooperatives in comparison to corporations that are not G&T cooperatives.

(f) It is hereby recognized that generation and transmission cooperatives are subject to rules, regulations and requirements from the Rural Utilities Service, the Federal Energy Regulatory Commission, and the North American Electric Reliability Corporation, as well as the rules and requirements of regional transmission organizations to which they belong and to competitive pressures from the wholesale market. In order to clarify the extent to which a generation and transmission cooperative is subject to regulation by the Mississippi Public Service Commission pursuant to Section 77-3-5, the Legislature declares that a generation and transmission cooperative is only subject to the provisions of Sections 77-3-11, 77-3-13, 77-3-14, 77-3-23, 77-3-25 and 77-3-27, and also subject to the provisions of Section 77-3-45, and any rules promulgated thereby to the extent such rules are necessary for the Mississippi Public Service Commission to carry out its responsibilities under such code sections. The policy objectives identified in Section 77-3-2 and the definitions provided in Section 77-3-3 shall be applicable to such code sections listed above as applied to generation and transmission cooperatives.

HISTORY:

Laws, 2016, ch. 436, § 1, eff from and after July 1, 2016.

§ 77-5-257. TVA jurisdiction.

It is hereby recognized that certain corporations formed or operating under this article have entered into contracts with the Tennessee Valley Authority for the purchase of wholesale electric power and that the operations, facilities, services and rates of such corporations are thereby subject to extensive regulation by the Tennessee Valley Authority. In order to avoid the inefficiencies and confusion caused by duplicative, overlapping and conflicting jurisdiction and regulations, it is hereby declared that the Mississippi Public Service Commission and political subdivisions of the state shall not have jurisdiction over and shall not regulate those portions or aspects of a corporation's operations, facilities, services, or rates that are regulated by the Tennessee Valley Authority. In the event of a dispute between the Mississippi Public Service Commission (commission) and the Tennessee Valley Authority (TVA) over the existence or scope of TVA's regulatory authority, the commission shall defer to TVA's asserted authority unless and until the commission has obtained a favorable, final, and nonappealable declaratory judgment against TVA in a court of competent jurisdiction. In any such suit, the commission shall not force a corporation(s) to incur legal fees and expenses by naming them as a party, though a corporation shall maintain the right to seek voluntary intervention under the rules of the court in which the action is pending.

HISTORY:
Laws, 2016, ch. 387, § 22, eff from and after July 1, 2016.

§ 77-5-259. Limitation for billing errors.

In any action or regulatory proceeding arising from any overbilling or underbilling by a corporation, no collection, reimbursement, or other relief may be awarded for underbillings or overbillings occurring more than six (6) years prior to the commencement of the action or regulatory proceeding.

HISTORY:
Laws, 2016, ch. 387, § 23, eff from and after July 1, 2016.

ARTICLE 7.

LOCAL GOVERNMENTAL POWER DEVELOPMENT UNDER LAWS OF 1934.

Sec.
77-5-301. Counties may engage in power development.
77-5-303. Intergovernmental cooperation.
77-5-305. Ordinance of intention; notice; election.
77-5-307. Activities must be self-sustaining.
77-5-309. Exercise of power of eminent domain.
77-5-311. Debt limitations are inapplicable.
77-5-313. Provisions of this article shall be applicable to municipalities as well as counties.
77-5-315. Construction of article; article cumulative.

§ 77-5-301. Counties may engage in power development.

The counties of the State of Mississippi, acting by and through their boards of supervisors, are hereby authorized to erect, construct, purchase, and/or acquire and/or maintain and/or operate electric light plants, electric transmission lines, electric distribution system substations, and/or all electrical appurtenances and/or electric appliances and/or electric equipment necessary or useful in the operation or distribution of electric power and/or electric energy. The boards of supervisors shall have full authority to purchase, rent, lease, and/or acquire any and/or all kinds of property, real and/or personal, in order to carry out said powers and to enter into any and all contracts with the Tennessee Valley Authority and/or any similar agency of the federal government, which may be deemed necessary or expedient by such boards in exercising such powers. The boards of supervisors shall have full control over the erection, construction, maintenance, and operation of such properties, with full powers to pass rules for the control, operation, and maintenance of such properties, the rate to be charged, the manner of operation, and the employment of officials and employees of every kind.

HISTORY:
Codes, 1942, § 5429; Laws, 1934, ch. 291.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities §§ 63, 86, 97, 149, 198.

CJS.
29 C.J.S., Electricity §§ 32-39 et seq.

§ 77-5-303. Intergovernmental cooperation.

The board of supervisors of any county is expressly authorized to combine with any other county and/or municipality and/or counties and/or municipalities in the purchase and/or construction and/or the leasing and/or the acquiring of any of the properties enumerated in the preceding section of this article. For this purpose the boards of supervisors of the counties, and/or the governing authorities of the municipalities, are authorized and empowered to arrange by contract all the details for the erection, construction, maintenance, operation, and control of such property, the sharing of the costs, and/or the distribution of power, and the selection of a governing body to control and handle said property.

HISTORY:
Codes, 1942, § 5430; Laws, 1934, ch. 291.

§ 77-5-305. Ordinance of intention; notice; election.

In the event the board of supervisors of any county shall decide to exercise the powers authorized by this article, it shall adopt an ordinance expressing such intention and outlining the nature of the project and/or projects to be undertaken, and fix the maximum sum to be expended on said project for the erection, construction, improvement, and/or purchase of any of the property authorized to be acquired by this article. The board shall give notice of such intention by publication in a newspaper having a general circulation in or published in said county for at least once a week for three successive weeks. It shall only be necessary that said notice shall state that the board has declared its intention to avail itself of the powers granted by this article, and to name the maximum amount proposed to be invested in the projects proposed.

In the event that twenty percent (20%) of the qualified electors of the county do not file a written protest against any such project by or before the first regular meeting of the board of supervisors after completion of publication of notice, the board is authorized to exercise the powers and authority named in Section 77-5-301 without further notice.

In the event that twenty percent (20%) of the qualified voters shall file such written petition protesting against such proposed projects, the board must call a special election, before proceeding further, giving notice of the date of such election by publication in a newspaper published in the county or having a general circulation in said county, at least once each week for three successive weeks, the first publication of which must be at least thirty (30) days before the date of the election. The board of supervisors shall have the power to fix the date of such election, and such election shall be conducted as other special elections are conducted. If a majority of the qualified electors voting in such election shall vote in favor of such project, the board of supervisors shall have the power to put the same into effect. The board of supervisors may, in its discretion, call a special election without a petition of protest being filed, which shall be conducted in the same manner as heretofore outlined.

HISTORY:
Codes, 1942, § 5431; Laws, 1934, ch. 291.

§ 77-5-307. Activities must be self-sustaining.

No board of supervisors taking advantage of the provisions of this article shall issue any notes, bonds, or other obligations against the county for the purpose of paying or securing the payment of the cost or expense of purchasing, constructing, or otherwise acquiring, extending, or improving any real or personal property to be used, operated, or controlled under the provisions of this article, and the credit of the county shall not be pledged for the obligations arising out of the exercise of the powers contained in this article. All revenue derived from the operation of any property authorized by this article shall be placed in a separate fund, out of which the expenses are authorized to be paid. The board of supervisors shall have the power to pledge, assign, or otherwise hypothecate the net earnings of said property for a period not exceeding twenty-five years for the purpose of securing the payment of the original cost of the purchase and/or construction and/or extension and/or improvement of such property and also to mortgage or otherwise give a lien on any such property in order to secure the payment of any indebtedness on such property. The board of supervisors shall have power to borrow money for the purpose of paying the expenses authorized by this section and to issue negotiable notes or other evidences of indebtedness each of which shall distinctly state on its face that it is payable solely out of the earnings of the electric power system of such county and that the full faith and credit of the county are not pledged for its payment. The board of supervisors shall have the power to mortgage or otherwise give a lien on the electric power system of the county in order to secure any money borrowed for the purposes authorized in this article. The board of supervisors is expressly authorized to enter into such contracts as may be necessary and proper to carry out the provisions of this section.

HISTORY:
Codes, 1942, § 5432; Laws, 1934, ch. 291.

§ 77-5-309. Exercise of power of eminent domain.

The board of supervisors of any county is expressly authorized to exercise the power of eminent domain anywhere in the state, within or without the boundaries of such county, in order to acquire any property, real or personal, necessary or useful in the furtherance of the provisions of this article. Any property so acquired shall be paid for only out of the earnings of the electric power system of such county, or from money borrowed as authorized under the provisions of Section 77-5-307.

HISTORY:
Codes, 1942, § 5433; Laws, 1934, ch. 291.

Cross References —
Grant of right of eminent domain to hydro-electric companies, see § 11-27-41.

RESEARCH REFERENCES

Am. Jur.
9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 11-18 (rights of way and eminent domain).

§ 77-5-311. Debt limitations are inapplicable.

No statutes fixing the maximum amount of indebtedness of the county or prohibiting the issuance of bonds, notes, or other evidences of indebtedness shall apply or operate to limit the amount of money to be borrowed under this article, and in computing the indebtedness of any county the money borrowed under the provisions of this article, and the credit obtained under the provisions of this article, shall not be included as an obligation or indebtedness of the county.

HISTORY:
Codes, 1942, § 5434; Laws, 1934, ch. 291.

§ 77-5-313. Provisions of this article shall be applicable to municipalities as well as counties.

All rights, privileges, powers and duties granted or imposed in the preceding sections to counties acting through their boards of supervisors shall likewise apply and be applicable to the municipalities acting through their governing authorities, who may exercise the same conjunctively with counties acting through their boards of supervisors.

HISTORY:
Codes, 1942, § 5435; Laws, 1936, ch. 187.

Cross References —
Municipally-owned utilities generally, see §§ 21-27-11 et seq.

§ 77-5-315. Construction of article; article cumulative.

It being the purpose of this article to promote rural electrification and encourage the Tennessee Valley Authority to distribute electric power in this state, the provisions of this article shall receive a liberal interpretation and construction.

It is not the purpose of this article to repeal or alter any existing law providing for the purchase, construction, and/or operation of any electric light plant, transmission lines, distribution system, and/or other electric properties by municipalities and/or counties, but to provide an additional and/or cumulative and/or alternative method for the acquiring, purchasing, constructing, maintaining, operating, and/or controlling of such electric light plants, transmission lines, distribution systems, and/or other electric properties coming under the provisions of this article.

HISTORY:
Codes, 1942, §§ 5436, 5437; Laws, 1934, ch. 291.

ARTICLE 9.

LOCAL GOVERNMENTAL POWER DEVELOPMENT UNDER LAWS OF 1936.

Sec.

77-5-401. Short title.
77-5-403. Definitions.
77-5-405. Powers of municipalities.
77-5-407. Issuance of bonds; election resolution and election procedure.
77-5-409. Effect of election.
77-5-411. Validation of bonds.
77-5-413. Bond provisions.
77-5-415. Securing payment of bonds.
77-5-417. Rights and remedies of bondholders.
77-5-419. Additional rights and remedies of bondholders may be conferred by resolution.
77-5-421. Debt limitations are inapplicable.
77-5-423. Payment of preliminary expenses.
77-5-425. Board of public utilities; appointment and terms of members.
77-5-427. Board of public utilities; bond, oath, compensation and removal of members; meetings; election of officers.
77-5-429. Supervision and control of the electric plant; supervisory body and electric plant superintendent.
77-5-431. Electric plant fund.
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77-5-435. Disposition of revenues.
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77-5-439. Records and reports of the board of public utilities.
77-5-441. Exercise of power of eminent domain by municipality.
77-5-443. Use of certain rights of way; payment of indebtedness.
77-5-445. Election for disposition of electric plant.
77-5-447. Construction of article; article supplemental and additional to existing law.

§ 77-5-401. Short title.

This article may be cited as "The Municipal Electric Plant Law of 1936."

HISTORY:
Codes, 1942, § 5526; Laws, 1936, ch. 185.

Cross References —
Municipally-owned utilities generally, see §§ 21-27-11 et seq.

Municipalities jointly furnishing electric power, see §§ 77-5-701 et seq.

JUDICIAL DECISIONS

1. In general.

Under this statute a city may own and operate its own plant for the distribution of electricity. Mississippi Power Co. v. Aberdeen, 95 F.2d 990, 1938 U.S. App. LEXIS 4266 (5th Cir. Miss. 1938).

§ 77-5-403. Definitions.

The following terms when used in this article shall have the following meaning:

(a) The term "municipality" shall mean any county, incorporated city, town or village in the State of Mississippi.

(b) The term "electric plant" shall mean generating and/or transmission and/or distribution systems, together with all other facilities, equipment and appurtenances necessary or appropriate to any such system, for the furnishing of electric power and energy for lighting, heating, power or any other purpose for which electric power and energy can be used.

(c) The term "improvement" shall mean any improvement, extension, betterment or addition to any electric plant.

(d) The term "electric service" shall mean the furnishing of electric power and energy for lighting, heating, power or any other purpose for which electric power and energy can be used.

(e) The term "acquire" shall mean to purchase, to lease, to construct, to reconstruct, to replace, or to acquire by gift or exercise of the right of eminent domain.

(f) The term "dispose" shall mean to sell, to lease, or otherwise transfer any interest in property.

(g) The term "improve" shall mean to acquire any improvement.

(h) The term "federal agency" shall include the United States of America, the President of the United States of America, or the Federal Emergency Administrator of Public Works, Reconstruction Finance Corporation, Tennessee Valley Authority, the Administrator of the Rural Electrification Administration, or any other similar agency, instrumentality or corporation of the United States of America, which has heretofore been or may hereafter be created by or pursuant to any act or acts or joint resolution of the Congress of the United States of America.

(i) The term "law" shall mean any act or statute, general, special or local, of the State of Mississippi, including, but without limitation, the charter of any municipality.

(j) The term "governing body" shall mean the board of supervisors, board, body or commission having general charge of the municipality.

HISTORY:

Codes, 1942, § 5527; Laws, 1936, ch. 185.

§ 77-5-405. Powers of municipalities.

Every municipality shall have power and is hereby authorized:

(a) To acquire, improve, operate and maintain within and/or without the corporate or county limits of such municipality, without respect to the limitation of any other law, and (with the consent of such other municipality) within the corporate or county limits of any other municipality, an electric plant, and to provide electric service to any person, firm, public or private corporation, or other user or consumer of electric power and energy, and to charge therefor.

(b) To acquire, improve or use jointly with any other municipality a transmission line or lines or generating plants together with all necessary and appropriate facilities, equipment and appurtenances, for the purpose of generating or transmitting power and energy and/or connecting their respective electric plants with a wholesale source of supply, and to this end such municipalities may provide by contract for the method of holding title, for the allocation of responsibility for operation and maintenance, and for the allocation of expenses and revenues.

(c) To accept grants, loans, or other financial assistance from any federal agency, for or in aid of the acquisition or improvement of any electric plant.

(d) To contract debts for the acquisition or improvement of any electric plant, to borrow money, to issue its bonds to finance such acquisition or improvement and to provide for the rights of the holders of the bonds and to secure the bonds as hereafter provided in this article, and to pledge all or any part of the revenues derived from electric service to the payment of such debts or repayment of money borrowed.

(e) To assess, levy and collect unlimited ad valorem taxes on all property subject to taxation to pay such bonds, and the interest thereon.

(f) To acquire, hold and, subject to the applicable provisions of any bonds or contracts, to dispose of any property, real or personal, tangible or intangible, or any right or interest in any such property in connection with any electric plant, and whether or not subject to mortgages, liens, charges, or other incumbrances; however, no municipality shall dispose of all or substantially all of its electric plant except as provided in Section 77-5-445.

(g) To make contracts and execute instruments containing such covenants, terms, and conditions as in the discretion of the municipality may be necessary, proper or advisable for the purpose of obtaining loans from any source, or grants, loans or other financial assistance from any federal agency, including, but without limitation, covenants, terms, and conditions with respect to the acquisition and/or construction of an electric plant or any improvement thereto with money in whole or in part borrowed from or granted by any such federal agency and subject to the provisions of any acts or joint resolutions of the Congress of the United States of America heretofore or hereafter enacted to encourage public works or relieve unemployment; to make all other contracts and execute all other instruments as in the discretion of the municipality may be necessary, proper or advisable in or for the furtherance of the acquisition, improvement, operation and maintenance of any electric plant and the furnishing of electric service; and to carry out and perform the covenants, terms, and conditions of all such contracts or instruments.

(h) To enter on any lands, waters and premises for the purpose of making surveys, soundings and examinations in connection with the acquisition, improvement, operation, or maintenance of any electric plant and the furnishing of electric service.

(i) To do all acts and things necessary or convenient to carry out the powers expressly given in this article.

(j) To make any and all contracts necessary or convenient for the full exercise of the powers herein granted with any natural person, firm, association, corporation, business trust, partnership, body politic, federal agency, or municipality, including, but not limited to (1) contracts for the purchase or sale of electric energy or power, and (2) contracts for the acquisition or improvement of all or any part of an electric plant or plants. In connection with any such contract the municipality may stipulate and agree to such covenants, terms and conditions as the governing body may deem appropriate, including, but without limitation, covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices, and the manner of disposing of the revenues of the system or systems conducted and operated by the municipality.

HISTORY:

Codes, 1942, § 5528; Laws, 1936, ch. 185.

Cross References —

Powers of municipalities generally with respect to public utilities, see § 21-27-23.

Power of municipalities to jointly furnish electric power, see § 77-5-703.

JUDICIAL DECISIONS

1. In general.

Certificate of public convenience and necessity issued by Public Service Commission (PSC) to utility grants exclusive right to operate in designated area, so long as utility is capable of providing adequate service to customers in area covered by certificate. Cities of Oxford, Carthage, Louisville, Starkville & Tupelo v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59, 1997 Miss. LEXIS 386 (Miss. 1997).

Wisdom of constructing a municipally owned electrical distribution system in competition with one privately owned cannot be judicially inquired into. Mississippi Power & Light Co. v. Coldwater, 234 Miss. 615, 106 So. 2d 375, 112 So. 2d 222, 1959 Miss. LEXIS 574 (Miss. 1959).

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Utilities §§ 63, 86, 97, 149, 198.

9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 11-18 (rights of way and eminent domain).

CJS.

29 C.J.S., Electricity §§ 32-39 et seq.

§ 77-5-407. Issuance of bonds; election resolution and election procedure.

Before any bonds are issued under this article an election shall be held in the manner herein provided. The governing body of the municipality shall adopt a resolution (herein called the "election resolution") which shall state in substance:

(a) the amount or maximum amount of bonds to be issued;

(b) the purpose or purposes for which such bonds are to be issued;

(c) the rate or maximum rate of interest which such bonds are to bear;

(d) a brief concise statement (which need not go into any detail other than the mere statement of fact) showing whether such bonds will be payable (1) exclusively from revenues, (2) exclusively from taxes, (3) primarily from revenues and, to the extent of any deficiency in such revenues, from taxes, or (4) from taxes and additionally secured by a pledge of revenues;

(e) the date on which such election will be held; and

(f) the place or places where votes may be cast.

Such election resolution shall be published in full at least once, not less than fifteen (15) days prior to the date fixed for such election, in a newspaper published and circulating in the municipality, or, if there be no such newspaper, then such election resolution shall be so published in a newspaper circulating in the municipality. Such election resolution shall also be posted not less than fifteen (15) days prior to the date fixed for such election in five (5) public places in the municipality.

At such election the ballot shall contain a brief statement of the maximum amount of bonds to be authorized and the purposes for which such bonds are to be issued, and shall contain the words "for the issuance of electric plant bonds" and "against the issuance of electric plant bonds," so arranged that the voter can intelligently vote his preference by making a cross (x) mark opposite the words indicating his preference. It shall not be necessary for the ballot to be of any particular size, color or quality, nor need sample ballots be printed, posted, or distributed.

At or before the regular meeting of the governing body of the municipality next succeeding the date of such election, such governing body shall canvass the returns and determine and declare the results of the election, and it shall be the duty of the governing body of such municipality to enter upon its minutes the results and the returns in such election. Except as otherwise provided in this article, such election shall be conducted by the election authorities prescribed by the general law of the State of Mississippi and according to the provisions of the general election laws of the State of Mississippi.

HISTORY:

Codes, 1942, § 5529; Laws, 1936, ch. 185.

JUDICIAL DECISIONS

1. In general.

Owner of an electrical distribution system may question validity of a municipal bond issue for construction of a competing system without inviting other taxpayers to join. Mississippi Power & Light Co. v. Coldwater, 234 Miss. 615, 106 So. 2d 375, 112 So. 2d 222, 1959 Miss. LEXIS 574 (Miss. 1959).

A resolution directing publication of a notice of a municipal bond election in a certain newspaper described as being published in the county in which the municipality is situated does not meet the requirements of this section. Mississippi Power & Light Co. v. Coldwater, 234 Miss. 615, 106 So. 2d 375, 112 So. 2d 222, 1959 Miss. LEXIS 574 (Miss. 1959).

This section does not require the notice to be posted when published in a newspaper published and circulating in the municipality, the provision relative to the posting of notices referring to publication in a newspaper circulating but not published in the municipality. Mississippi Power & Light Co. v. Batesville, 187 Miss. 737, 193 So. 814, 1940 Miss. LEXIS 247 (Miss. 1940).

Statement in an election notice that the purpose of raising funds was to "acquire by construction or purchase or both by construction and purchase," an electric plant was sufficient without stating specifically whether the acquisition was to be by construction or by acquiring the electric plant of another. Mississippi Power & Light Co. v. Batesville, 187 Miss. 737, 193 So. 814, 1940 Miss. LEXIS 247 (Miss. 1940).

The chancery court had jurisdiction over a validation proceeding in connection with the issuance of bonds for the construction or purchase by a municipality of an electric light plant, as against the contention that the publication of notice of validation proceedings did not show that the seal of the court was affixed to the printed notice to the taxpayers issued by the clerk, since it was not necessary to affix such seal to the notice. Mississippi Power & Light Co. v. Batesville, 187 Miss. 737, 193 So. 814, 1940 Miss. LEXIS 247 (Miss. 1940).

The notice to taxpayers in connection with the issuance of bonds for the purchase or construction of an electric plant advising them of validation proceedings in chancery court, was not required to have affixed to it the seal of the chancery court. Mississippi Power & Light Co. v. Batesville, 187 Miss. 737, 193 So. 814, 1940 Miss. LEXIS 247 (Miss. 1940).

§ 77-5-409. Effect of election.

If a majority of the qualified voters who vote in such election vote "for the issuance of electric plant bonds," the governing body of the municipality shall proceed to issue the bonds described in the election resolution. If no such majority so assents, the proposition thus defeated shall not again be the subject of an election until three months shall have expired from the time the election relative to such bonds was held.

HISTORY:
Codes, 1942, § 5530; Laws, 1936, ch. 185.

§ 77-5-411. Validation of bonds.

(1) If an election on the proposition is had and such election results in favor of the proposition, the bonds so authorized may be validated in the manner prescribed in Chapter 13 of Title 31, Mississippi Code of 1972.

(2) In all instances where during the year 1948 any city in Mississippi adopted proceedings for the issuance of bonds to pay all or part of the cost of making extensions and improvements to an electric system owned and operated by such city, and where such bonds were to be payable solely from the revenues to be derived by such city from the operation of such electric system, such proceedings are hereby ratified, validated and confirmed, and the bonds issued pursuant to such proceedings are hereby ratified, validated and confirmed, and the bonds constitute the legal and binding obligations of each such city, and this despite any lack of authority for the authorization of such bonds, and despite the failure of the governing body of such city to observe any pertinent statutory provisions in the authorization or issuance of such bonds. All of the covenants and agreements contained in such proceedings are hereby declared legal and binding and each such city shall be under the statutory duty

of carrying out all such covenants and agreements in accordance with their terms. All such bonds shall constitute fully negotiable instruments.

HISTORY:
Codes, 1942, §§ 5531, 5531.5; Laws, 1936, ch. 185; Laws, 1948, ch. 209, §§ 1, 2.

§ 77-5-413. Bond provisions.

The bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times, not exceeding thirty (30) years from their respective dates, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be sold or hypothecated in such blocks, may be subject to such terms of redemption, with or without premium, and may be declared or become due before the maturity date thereof, as may be provided by resolution or resolutions of the governing body of the municipality. Such bonds may be issued for money or property at public or private sale, for such price or prices, at such rate or rates of interest, and may be hypothecated in such manner as the governing body may determine, but the interest cost to maturity of the property (at the value determined by the governing body, which determination shall be conclusive) or the money received for any issue of said bonds, shall not exceed the rate of six percent (6%) per annum, payable semi-annually. Such bonds shall have all the qualities and incidents of negotiability. Such bonds shall not be subject to taxation. Pending the preparation, execution or delivery of definite bonds, interim receipts or certificates or temporary bonds may be delivered to the purchaser or purchasers of such bonds.

In case any of the officers whose signatures or countersignatures appear on such bonds shall cease to be such officers before the delivery of the bonds, such signatures and countersignatures shall nevertheless be valid and sufficient for all purposes, the same as though such officers had remained in office until the bonds had been delivered. Such bonds, when issued, shall be known as "electric plant bonds."

HISTORY:
Codes, 1942, § 5532; Laws, 1936, ch. 185.

§ 77-5-415. Securing payment of bonds.

In order to secure the payment of any of the bonds issued pursuant to this article, and interest thereon, or in connection with such bonds, the governing body of any municipality shall have power as to such bonds, to the extent not inconsistent with the mandatory provisions of this article or the provisions of the election resolution:

(a) To pledge the full faith and credit and unlimited taxing power of the municipality to the punctual payment of the principal of and interest on such bonds.

(b) To pledge all or any part of the revenues derived from electric service.

(c) To provide for the terms, form, registration, exchange, execution and authentication of such bonds.

(d) To provide for the replacement of lost, destroyed, or mutilated bonds.

(e) To covenant as to the use and disposition of the proceeds for the sale of such bonds.

(f) To covenant as to the rates and charges of the electric plant.

(g) To redeem such bonds, and to covenant for their redemption and to provide the terms and conditions thereof.

(h) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(i) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

(j) To vest in a trustee or trustees the right to receive all or any part of the income and revenue pledged and assigned to, or for the benefit of, the holder or holders of bonds issued under the provisions of this article, and to hold, apply and dispose of the same and the right to enforce any covenant made to secure or pay or in relation to the bonds; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute "events of default" and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of bonds of any specified amount or percentage may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate.

(k) To make covenants other than, and in addition to, the covenants herein authorized, of like or different character, necessary or advisable to effectuate the purpose of this article.

(*l*) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties.

HISTORY:
Codes, 1942, § 5533; Laws, 1936, ch. 185.

§ 77-5-417. Rights and remedies of bondholders.

Any holder or holders of bonds, including a trustee or trustees for holders of such bonds, shall have the right, in addition to all other rights:

(a) By mandamus or other suit, action or proceedings in any court of competent jurisdiction to enforce his or their rights against the municipality, the governing body thereof, the board of public utilities hereafter provided for in this article, and any other proper officer, agent or employee of any of them, including, but without limitation, the right to require the municipality, the governing body, the said board, and any proper officer, agent or employee of any of them, to assess, levy and collect taxes, and to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of taxes or electric plant revenues, and to require the municipality, the governing body thereof, the said board and any officer, agent or employee of any of them to carry out any other covenants and agreements and to perform its and their duties under this article.

(b) By action or suit in equity to enjoin any act or things which may be unlawful or a violation of the rights of such holder of bonds.

HISTORY:
Codes, 1942, § 5534; Laws, 1936, ch. 185.

Cross References —
Rights of bondholders when municipalities jointly furnish electric power, see § 77-5-751.

§ 77-5-419. Additional rights and remedies of bondholders may be conferred by resolution.

Any municipality shall have power by resolution of its governing body to confer upon any holder or holders of a specified amount or percentage of bonds, including a trustee or trustees for such holders, the right in the event of an "event of default" as defined in such resolution or as may be defined in any agreement with the holder or holders of such bonds or the trustee or trustees therefor:

(a) By suit, action or proceedings in any court of competent jurisdiction to obtain the appointment of a receiver of the electric plant or any part or parts thereof. If such receiver be appointed he may enter and take possession of such electric plant or any part or parts thereof and operate and maintain the same, and collect and receive all revenues thereafter arising therefrom in the same manner as the municipality itself might do and shall deposit such moneys in a separate account or accounts and apply the same in accordance with the obligations of the municipality as the court shall direct.

(b) By suit, action or proceeding in any court of competent jurisdiction to require the governing body of the municipality and/or the board to account as if it were the trustee of an express trust.

Any such resolution shall constitute a contract between the municipality and the holders of bonds of such issue.

HISTORY:
Codes, 1942, § 5535; Laws, 1936, ch. 185.

Cross References —
Rights of bondholders when municipalities jointly furnish electric power, see § 77-5-751.

§ 77-5-421. Debt limitations are inapplicable.

Bonds may be issued under this article notwithstanding and without regard to any limits or restriction on the amount or percentage of indebtedness or of outstanding obligations of any municipality contained in any law.

HISTORY:
Codes, 1942, § 5536; Laws, 1936, ch. 185.

Cross References —
Limitation of indebtedness insofar as municipal bonds for public utilities are generally concerned, see § 21-33-303.

§ 77-5-423. Payment of preliminary expenses.

All expenses actually incurred by the governing body of any municipality in the making of surveys, estimates of cost and of revenues, employment of engineers, attorneys or other employees, the giving of notices, taking of options, selling of bonds, and all other preliminary expenses of whatever nature, which such governing body deems necessary in connection with or precedent to the acquisition or improvement of any electric plant and which it deems necessary to be paid prior to the issuance and delivery of the bonds issued pursuant to the provisions of this article, may be met and paid out of the general fund of said municipality not otherwise appropriated, or from any other available fund.

All such payments from the general or other funds shall be considered as temporary loans and shall be repaid immediately upon sale and delivery of the bonds, and claim for such repayment shall have priority over all other claims against the proceeds derived from the sale of such bonds.

HISTORY:
Codes, 1942, § 5537; Laws, 1936, ch. 185.

§ 77-5-425. Board of public utilities; appointment and terms of members.

Any municipality, excepting those which have a population of less than two thousand (2,000), issuing bonds under the provisions of this article for the acquisition of an electric plant shall, and any municipality now or hereafter owning or operating an electric plant under this article or any other law may, appoint a board of public utilities (hereinafter called the “board”).

The board shall be created in the following manner. At the time the governing body of a municipality issuing bonds under the provisions of this article determines that a majority of the qualified voters voting on the electric resolution have assented to the bond issue for the acquisition of an electric plant, the chief executive officer of the municipality shall, or if no such bonds are issued or if the municipality has a population of less than two thousand (2,000), then at any time he may, with the consent of the governing body of the municipality, appoint two (2) or four (4) men from among the property holders of such municipality who are residents of the municipality and have resided therein for not less than one (1) year next preceding the date of appointment to such board. No regular compensated officer or employee of a municipality shall be eligible for such appointment until at least one (1) year after the expiration of the term of his public office.

The original appointees, if two (2) be appointed, shall serve for two (2) and four (4) years respectively, or if four (4) be appointed, shall serve for one (1), two (2), three (3) and four (4) years respectively, from the first day of July next succeeding the date of appointment, as the said chief executive officer shall designate. Successors to retiring members so appointed shall be appointed for a term of four (4) years in the same manner, prior to the expiration of the term of office of the retiring members.

In addition to the members so appointed, such chief executive officer shall also, with the consent of the governing body of the municipality, designate a member of such governing body to serve as a third or fifth member of the board, as the case may be. The term of such member shall be for such time as the appointing officer may fix, but in no event shall it extend beyond such appointee's term of office in such governing body. Appointments to complete unexpired terms of office shall be made in the same manner as original appointments.

For the purposes of this section, the president of the board of supervisors of a county shall be considered the chief executive officer of the county.

HISTORY:
Codes, 1942, § 5538; Laws, 1936, ch. 185.

§ 77-5-427. Board of public utilities; bond, oath, compensation and removal of members; meetings; election of officers.

Each member of the board of public utilities shall give such bond, if any, as may be required by resolution of the governing body of the municipality and shall qualify by taking the same oath of office as required for members of such governing body.

A majority of the board shall constitute a quorum. The board shall act by vote of a majority present at any meeting attended by a quorum and vacancies in the board shall not affect its power and authority so long as a quorum remains. Within ten (10) days after appointment and qualifications of members, the board shall hold a meeting to elect a chairman. The board shall at the same time designate a secretary and treasurer, or secretary-treasurer, who need not be members or a member of the board, and shall require such secretary and treasurer, or secretary-treasurer, to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to Twenty-five Thousand Dollars ($25,000.00), and shall fix their or his compensation. The board shall hold public meetings at least once each month, at such regular time and place as the board may determine. Changes in such time and place of meeting shall be made known to the public as far in advance as practicable. Save as otherwise expressly provided, the board shall establish its own rules of procedure. All members of the board shall serve as such without compensation, but they shall be allowed necessary traveling and other expenses while engaged in the business of the board, including allowance of not to exceed Five Dollars ($5.00) per month for attendance at meetings. Such expenses as well as the salaries of the secretary and treasurer, or secretary-treasurer, shall constitute a cost of operation and maintenance of the electric plant.

Any member of the board may be removed from office for cause upon a vote of three-fourths (¾) of the members of the governing body of the municipality, but only after preferment of formal charges by resolution of a majority of the members of such governing body at a public hearing before such governing body.

HISTORY:

Codes, 1942, § 5538; Laws, 1936, ch. 185; Laws, 1986, ch. 458, § 47, eff from and after October 1, 1986.

Editor's Notes —

Laws of 1986, ch. 458, § 48, provided that § 77-5-427 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Section 48, Chapter 458, Laws of 1986, by deleting the date for repeal.

§ 77-5-429. Supervision and control of the electric plant; supervisory body and electric plant superintendent.

The general supervision and control of the acquisition, improvement, operation and maintenance of the electric plant shall be in charge of the following agency (hereinafter referred to as the "supervisory body"): the board of public utilities, or if there be no board, then the governing body of the municipality. The supervisory body shall appoint an electric plant superintendent (hereinafter called "superintendent"), who shall be qualified by training and experience for the general superintendence of the acquisition, improvement and operation of the electric plant. The superintendent need not be a resident of the state at the time of his appointment. His salary shall be fixed by the supervisory body. The superintendent shall be removable by the supervisory body, but only upon the preferment of formal charges by such body and a public hearing upon written notice of not less than forty-eight (48) hours.

Within the limits of the funds available therefor, all powers to acquire, improve, operate and maintain, and to furnish electric service, and all powers necessary or convenient thereto, conferred by this article shall be exercised on behalf of the municipality by the supervisory body and the superintendent respectively. Subject to the provisions of applicable bonds or contracts, the supervisory body shall determine programs and make all plans for the acquisition of the electric plant, shall make all determinations as to improvements, rates and financial practices, may establish such rules and regulations as it may deem necessary or appropriate to govern the furnishing of electric service, and may disburse all moneys available in the electric plant fund for the acquisition, improvement, operation and maintenance of the electric plant and the furnishing of electric service. A copy of the schedule of the current rates and charges in effect from time to time and a copy of all rules and regulations of the supervisory body relating to electric service shall be kept on public file at the main and all branch offices of the electric plant and also in the office of the municipal clerk or recorder.

The superintendent shall have charge of all actual construction, the immediate management and operation of the electric plant and the enforcement and execution of all rules, regulations, programs, plans and decisions made or adopted by the supervisory body. The superintendent shall appoint all employees and fix their duties and compensation, excepting that the appointment of all technical consultants and advisors and legal assistants shall be subject to the approval of the supervisory body. Subject to the provisions of subsection (f) of Section 77-5-405, the superintendent, with the approval of the supervisory body, may acquire and dispose of all property, real and personal, necessary to effectuate the purposes of this article. The title of such property shall be taken in the name of the municipality. The superintendent shall let all contracts, subject to the approval of the supervisory body, but may, without such approval, obligate the electric plant on purchase orders up to an amount to be fixed by the supervisory body, but not to exceed two thousand dollars ($2,000.00). Any work or construction exceeding in cost two thousand dollars ($2,000.00) shall, before any contract is let or work done, be advertised by the superintendent for bids; the supervisory body shall have power to reject any and all bids. The superintendent shall make and keep full and proper books and records, subject to the supervision and direction of the supervisory body, and the provisions of applicable contracts.

HISTORY:
Codes, 1942, § 5539; Laws, 1936, ch. 185.

RESEARCH REFERENCES

ALR.
Requirement that public contract be awarded on competitive bidding as applicable to contract for public utility. 81 A.L.R.3d 979.

Liability of electric utility to nonpatron for interruption or failure of power. 54 A.L.R.4th 667.

Liability of electric company to one other than employee for injury or death arising from commencement or resumption of service. 46 A.L.R.5th 423.

§ 77-5-431. Electric plant fund.

All moneys derived from the issuance of bonds under the provisions of this article, together with any federal grant made in connection therewith, shall be paid to the proper fiscal agent of the supervisory body. Such agent shall deposit such moneys, together with all receipts from electric service or any other operation of the supervisory body as such, in a separate bank account or accounts, separate from all other municipal funds, and shall keep adequate records of all such receipts and their sources. The fiscal agent shall pay out such moneys only on voucher signed by the superintendent. No such voucher for the payment of any such moneys shall be issued except upon the resolution or order of the supervisory body, a certified copy whereof shall be filed in the office of the fiscal agent.

HISTORY:
Codes, 1942, § 5540; Laws, 1936, ch. 185.

§ 77-5-433. Disposition of moneys received from the issuance of bonds.

All moneys received from the issuance of bonds shall be used solely to defray the cost of acquiring or improving an electric plant, except that such proceeds may in the discretion of the supervisory body also be used for the payment of the interest on the bonds during the first two (2) years following the date of such bonds. The cost of the electric plant shall include all costs of acquisition, or improvement, including all preliminary expenses described in Section 77-5-423, the cost of acquiring all property, franchises, easements, and rights in the judgment of the supervisory body necessary or convenient therefor, engineering and legal expenses, expenses for estimates of cost and revenues, expenses for plans, specifications and surveys, other expenses incident or necessary to determining the feasibility or practicability of the enterprise, administrative expense, and such other expense as may be incurred in the financing herein authorized, the acquisition or improvement of the electric plant, the placing of such plant in operation, including the creation of a cash working fund, and the performance of the things herein required or permitted in connection therewith.

HISTORY:
Codes, 1942, § 5541; Laws, 1936, ch. 185.

§ 77-5-435. Disposition of revenues.

The supervisory body of a municipality proceeding under the terms of this article shall devote all moneys derived from any source other than the issuance of bonds to or for the payment of all operating expenses; bond interest and retirement and/or sinking fund payments; the acquisition and improvement of the electric plant; contingencies; the payment of other obligations incurred in the operation and maintenance of the electric plant and the furnishing of electric service; the redemption and purchase of electric plant bonds in which case such bonds shall be canceled; the creation and maintenance of a cash working fund; the payment of an amount to the general funds of the municipality not to exceed a cumulative return of six percent (6%) per annum of the equity or investment, if any, of the municipality; and, if the governing body of the municipality shall by resolution so request, payments to the municipality in lieu of ad valorem taxes on the property of the electric plant within the corporate or county limits of the municipality not to exceed the amount of taxes payable on privately owned property of similar nature. Any surplus thereafter remaining after establishment of proper reserves, if any, shall be devoted solely to the reduction of rates. In computing the equity or investment of the municipality, the value of the electric plant shall be taken as its historical cost, less the accrued depreciation as of the date of the first exercise by the municipality of the powers conferred by this article. The payment of bonds or the acquisition or improvement of property from the receipts derived from electric service or any other operation of the supervisory body as such shall not be considered to increase the equity or investment of the municipality.

HISTORY:
Codes, 1942, § 5542; Laws, 1936, ch. 185.

§ 77-5-437. Payment for services rendered to municipalities and departments and works thereof.

The supervisory body shall charge the municipality and all departments and works thereof for any electric service furnished to them, at the rates applicable to other customers taking service under similar conditions. Revenues derived from such service shall be treated as all other revenues.

HISTORY:
Codes, 1942, § 5543; Laws, 1936, ch. 185.

§ 77-5-439. Records and reports of the board of public utilities.

The board of public utilities shall keep a complete and accurate record of all meetings and actions taken, and of all receipts and disbursements, and shall make reports of the same to the governing body of the municipality at stated intervals, not to exceed one (1) year. Said reports shall be in writing and shall be filed in open meeting of the governing body of the municipality. A copy shall be filed with the municipal clerk or recorder.

HISTORY:
Codes, 1942, § 5544; Laws, 1936, ch. 185.

Cross References —
Annual reports of municipalities jointly furnishing electric power, see § 77-5-767.

§ 77-5-441. Exercise of power of eminent domain by municipality.

Any municipality proceeding under the provisions of this article is hereby authorized and empowered to condemn any land, easements or rights of way either on, under or above the ground, for any and all purposes necessary in connection with the construction, operation and maintenance of an electric plant or improvements thereto. Title to property so condemned shall be taken in the name of the municipality. Such condemnation proceedings shall be pursuant to and in accordance with Chapter 27, Title 11, of the Mississippi Code of 1972. Where condemnation proceedings become necessary the judge of the circuit court in which such proceedings are filed shall upon application of the municipality and upon the deposit in the court, for the use of the person or persons lawfully entitled thereto, of such amount as the judge may deem necessary to assure just compensation, order that the right of possession shall issue immediately or as soon and upon such terms as the judge in his discretion may deem proper and just. Upon application of the parties in interest, the judge may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceedings.

HISTORY:

Codes, 1942, § 5546; Laws, 1936, ch. 185.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error by substituting "Chapter 27, Title 11, of the Mississippi Code of 1972" for "Chapter 33, Title 11, of the Mississippi Code of 1972." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References —

Grant of right of eminent domain to hydroelectric companies, see § 11-27-41.

Exercise of power of eminent domain by municipalities jointly furnishing electric power, see § 77-5-773.

JUDICIAL DECISIONS

1. In general.

Certificate of public convenience and necessity issued by Public Service Commission (PSC) to utility grants exclusive right to operate in designated area, so long as utility is capable of providing adequate service to customers in area covered by certificate. Cities of Oxford, Carthage, Louisville, Starkville & Tupelo v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59, 1997 Miss. LEXIS 386 (Miss. 1997).

RESEARCH REFERENCES

Am. Jur.

9 Am. Jur. Pl & Pr Forms (Rev), Electricity, Gas, and Steam, Forms 11-18 (rights of way and eminent domain).

Practice References.

Nichols on Eminent Domain (Matthew Bender).

§ 77-5-443. Use of certain rights of way; payment of indebtedness.

Any municipality may use any right of way, easement or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of an electric plant, held by the state or any other municipality, provided that such other municipality shall consent to such use.

No incorporated city, town or village shall be included within a county, nor shall any such incorporated city, town or village be required to pay any of the bonds or other indebtedness applicable to or incurred by a county, proceeding under the terms of this article, unless a majority of the qualified voters of said incorporated city, town or village voting in the election provided for in Section 77-5-407 shall vote in favor of the issuance of such bonds or other indebtedness.

HISTORY:

Codes, 1942, § 5545; Laws, 1936, ch. 185.

§ 77-5-445. Election for disposition of electric plant.

The governing body of the municipality may dispose of all or substantially all of the electric plant acquired by means of bonds issued under the provisions of this article, but only with the approval of the supervisory body and a majority of those voting in an election held as follows. The governing body of the municipality shall adopt a resolution which shall state in substance (a) that the supervisory body has approved the proposed disposition; (b) a full description of the property to be disposed of; (c) the purchaser or purchasers thereof; (d) the purchase price; (e) the terms or conditions of sale if such disposition is not for cash payable in full at the time of such disposition; (f) the date on which such election will be held; and (g) the place or places where votes may be cast. At such election the ballots shall contain the words "for the disposition of the electric plant" and "against the disposition of the electric plant." In all other respects the election shall be called and held in the manner set forth in Section 77-5-407.

HISTORY:
Codes, 1942, § 5547; Laws, 1936, ch. 185.

RESEARCH REFERENCES

ALR.
Power of municipality to sell, lease, or mortgage public utility plant or interest therein. 61 A.L.R.2d 595.

§ 77-5-447. Construction of article; article supplemental and additional to existing law.

This article is for the public purpose of promoting the increased use of electricity in the urban and rural areas of this state, and to enable all counties, as well as cities and towns, to secure the benefit of the surplus power generated or to be generated by the Tennessee Valley Authority at Wilson Dam in the State of Alabama and Norris Dam in the State of Tennessee, or the power generated at any other works or dams. This article is remedial in nature and the powers granted in it shall be liberally construed to effectuate the purposes hereof, and to this end every municipality shall have power to do all things necessary or convenient to carry out the purposes hereof in addition to the powers expressly conferred in this article.

The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law. Bonds may be issued under the provisions of this article for the acquisition or improvement of an electric plant notwithstanding that any other law may provide for the issuance of bonds for like purposes and without regard to the requirements, restrictions or procedural provisions contained in any other law. Any proceedings heretofore taken by any municipality relating to the subject-matter of this article, whether or not commenced under any other law, may at the option of the governing body, be discontinued and new proceedings instituted under this article.

HISTORY:
Codes, 1942, §§ 5548, 5549; Laws, 1936, ch. 185.

JUDICIAL DECISIONS

1. In general.
Certificate of public convenience and necessity issued by Public Service Commission (PSC) to utility grants exclusive right to operate in designated area, so long as utility is capable of providing adequate service to customers in area covered by certificate. Cities of Oxford, Carthage, Louisville, Starkville & Tupelo v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59, 1997 Miss. LEXIS 386 (Miss. 1997).

ARTICLE 11.

UNFAIR PRACTICES OF ELECTRICITY DISTRIBUTORS.

Sec.
77-5-501. Competition with proposed system barred for six months after filing of maps and statement of proposed operation.
77-5-503. Competition with proposed system barred for twelve months after filing of notice of federal loan agreement.
77-5-505. Notice to be furnished private utilities.
77-5-507. Promulgation of rules and regulations by authority; enforcement powers of authority.
77-5-509. Injunctions; chancery court powers.
77-5-511. Certified copy of statement of willingness to take service from proposed system as prima facie evidence.
77-5-513. Private utilities are not liable for service during six and twelve month periods.
77-5-515. Inapplicability of article.

§ 77-5-501. Competition with proposed system barred for six months after filing of maps and statement of proposed operation.

(1) Whenever a corporation or association organized under the provisions of Article 5 of this chapter (hereafter referred to in this article as the “filing corporation”) or whenever a group of persons which has formed a temporary organization with the intention of forming such a corporation or association under said laws, shall file with the Mississippi Rural Electrification Authority (hereafter referred to in this article as the “authority”) a map or maps indicating the area or areas in which the operations of said filing corporation are intended to be conducted, together with a statement verified by oath or affirmation to the effect that a majority of the potential users of electric energy, not then receiving central station electric service in said area or areas, has signified in writing its willingness to take service from the proposed system of said filing corporation it shall be unlawful for an electric utility, power and light company, person or corporation, after receipt of any notice provided in this article of the filing of said map or maps and statement, to begin the construction of any electric distribution lines within said area or areas or to solicit customers for electric service therein or in any manner to conflict, interfere or compete with the proposed system of said filing corporation, until after the expiration of six (6) months from the date of said filing of said map or maps and statement.

(2) The words “area” or “areas” as used herein in connection with the maps to be filed by said filing corporation shall be deemed to mean the area or areas which may be served in normal practice by secondary voltage extensions from the primary voltage lines indicated in said maps, which in any event shall not be less than fifteen hundred (1500) feet from either side of said primary lines.

HISTORY:
Codes, 1942, §§ 5490, 5491; Laws, 1938, ch. 250; Laws, 1938, Ex. ch. 77.

Cross References —
Antitrust law, see §§ 75-21-1 et seq.

JUDICIAL DECISIONS

1. In general.

The grant to an electric company's predecessor of authority to serve an urban area described as a city and its suburbs was not intended to include undeveloped land lying outside the area, and the expansion of the area comprising the municipality did not warrant the invasion by the electric company of an area previously certified to and being served adequately by another utility. Mississippi Power & Light Co. v. Capital Electric Power Asso., 222 So. 2d 399, 1969 Miss. LEXIS 1532 (Miss. 1969).

§ 77-5-503. Competition with proposed system barred for twelve months after filing of notice of federal loan agreement.

In the event that the filing corporation within the six months period provided for in Section 77-5-501 shall enter into any loan agreement with any federal agency for the financing of its proposed electric system, and shall file a written notice thereof with the authority, together with a copy of said loan agreement, no such electric utility, power and light company, person or corporation after receipt of notice of such loan agreement shall begin the construction of any electric distribution lines within said area or areas or solicit customers for electric service therein until after the expiration of twelve (12) months from the date of filing said notice of said loan agreement.

HISTORY:
Codes, 1942, § 5492; Laws, 1938, Ex. ch. 77.

§ 77-5-505. Notice to be furnished private utilities.

It shall be the duty of the authority to give notice in writing of the filing of the map or maps and statement and the loan agreement provided for in Sections 77-5-501 and 77-5-503 to each electric utility and power and light company having any electric transmission or distribution lines or system within or within ten (10) miles of any area shown in said maps where said filing corporation intends to operate its proposed system. There shall be attached to said notice blueprint copies of said maps, a copy of said statement, and a copy of the notice of said loan agreement in the event that such an agreement shall have been entered into. Sufficient copies for the purpose of such notices shall be furnished to the authority by and at the expense of the filing corporation. The filing corporation may give the notices required by said sections and such notices shall be effectual for the purposes of this article, notwithstanding any failure of the authority to give the notices herein provided for. Any notice shall be deemed to have been given within the requirements of this article when it has been deposited in the mails with postage prepaid and addressed to the principal office of any such electric utility, power and light company, person or corporation.

HISTORY:
Codes, 1942, § 5493; Laws, 1938, Ex. ch. 77.

§ 77-5-507. Promulgation of rules and regulations by authority; enforcement powers of authority.

The authority is hereby authorized to make and promulgate reasonable rules and regulations to carry out the provisions of this article and to take appropriate action for the enforcement thereof, including proceedings for injunctions against violations thereof, instigated in the name of the authority and upon its own motion. These powers and remedies shall be in addition to all other remedies provided in this article or that may exist under general provisions or rules of law.

HISTORY:
Codes, 1942, § 5494; Laws, 1938, Ex. ch. 77.

§ 77-5-509. Injunctions; chancery court powers.

Any filing corporation may institute proceedings to enjoin any violations of this article in the chancery court of any county where said filing corporation may have its principal place of business or where any such violations are alleged to take place or to be threatened, and such proceedings may be on the relation of the attorney-general or any district or county attorney of any district in which any portion of the proposed electric system of said filing corporation may be located. It shall be the duty of said officers to prosecute and to assist in the prosecution of said proceedings.

For the enforcement of this article, the said chancery court or the chancellor, in vacation, may exercise all the powers now or hereafter existing under the laws of this state in proceedings for injunctive relief, including temporary restraining orders. In any proceedings instituted by the authority on its own motion or by petition signed by the attorney-general or any district or county attorney, as herein provided, no bond shall be required as a condition of the issuance of any restraining order or injunction.

HISTORY:
Codes, 1942, § 5495; Laws, 1938, Ex. ch. 77.

Cross References —
Duties of county attorney generally, see § 19-23-11.

Duties of district attorney generally, see § 25-31-11.

§ 77-5-511. Certified copy of statement of willingness to take service from proposed system as prima facie evidence.

In any proceeding for the enforcement of this article, a certified copy of the statement mentioned in Section 77-5-501 shall be admitted in evidence and shall be presumed to be prima facie proof of the verity and accuracy of all statements therein required by the provisions of said section. The burden of proof shall be upon any defendant in any such proceeding to rebut said presumption by a clear preponderance of the evidence.

HISTORY:
Codes, 1942, § 5496; Laws, 1938, Ex. ch. 77.

§ 77-5-513. Private utilities are not liable for service during six and twelve month periods.

During the periods of six (6) and twelve (12) months, respectively, as provided in Sections 77-5-501 and 77-5-503, no person, firm, association or corporation within the area or areas indicated upon said maps within which the filing corporation proposes to operate shall have the right to require any electric utility or electric light and power company to supply electric energy. No action shall be brought or maintained in any court for damages for failure to supply such electric energy within said periods of six (6) and twelve (12) months, respectively, or within a reasonable time thereafter. The provisions of this section shall not be deemed to apply to any valid and enforceable contracts in writing for electric service subsisting at the time of receipt by any party to such contracts of any notice of filing said maps and statements provided for in Section 77-5-501.

HISTORY:
Codes, 1942, § 5497; Laws, 1938, Ex. ch. 77.

§ 77-5-515. Inapplicability of article.

This article shall not apply to the furnishing of electric energy to manufacturing, processing or industrial enterprises or to buildings necessary and appropriate to the operation of said enterprises, including residences, or to the solicitation of such electric service, or to the construction of through high voltage transmission lines not intended to serve individual rural customers in the area or areas shown on said maps provided for in Section 77-5-501. However, nothing in this section shall be construed as restricting the right of the filing corporation to serve manufacturing, processing or industrial enterprises.

HISTORY:
Codes, 1942, § 5498; Laws, 1938, Ex. ch. 77.

ARTICLE 13.

CONTRACTS WITH THE UNITED STATES.

Sec.
77-5-601. Contracts with United States for acquisition of electrical system and purchase or sale of electricity authorized.
77-5-603. Article cumulative and supplemental; construction of article.

§ 77-5-601. Contracts with United States for acquisition of electrical system and purchase or sale of electricity authorized.

Any municipal corporation, county, city, town, or village, power district or improvement authority, hereinafter called “municipality,” owning and/or operating or hereafter authorized to acquire and/or operate any electric generation, transmission and/or distribution system, is hereby authorized to contract with the United States of America, any agency thereof, or with any corporation owned by the United States for the acquisition of any such system or part thereof and/or the purchase or sale of electric energy. Such municipality is authorized in any such contract to stipulate and agree to such covenants, terms, and conditions as the governing body or board of the municipality may deem appropriate, including but without limitation, covenants, terms and conditions with respect to the resale rates, financial and accounting methods, service, operation and maintenance practices, and the manner of disposing of the revenues, of any such system, and to comply therewith. Any such contract heretofore entered into and any such covenants, terms or conditions heretofore stipulated or agreed to are hereby expressly validated.

HISTORY:
Codes, 1942, § 5552; Laws, 1936, ch. 271.

§ 77-5-603. Article cumulative and supplemental; construction of article.

Nothing contained in this article shall be construed as a restriction or limitation upon any authority, power or right which any municipality may have in the absence hereof. This article shall be construed as cumulative and shall be in addition and supplemental to any power, authority or right conferred by any other law.

This article is remedial in nature and any power, authority or right hereby conferred shall be liberally construed, and to this end every municipality shall have the power, authority and right, in addition to those expressly conferred hereby, to do all things necessary or convenient in carrying out the purposes hereof.

HISTORY:
Codes, 1942, § 5552; Laws, 1936, ch. 271.

ARTICLE 15.

JOINT MUNICIPAL ELECTRIC POWER.

Sec.
77-5-701. Short title.
77-5-703. Declaration of purpose.
77-5-705. Definitions.
77-5-707. Powers of municipality; determining power and energy needs; filing of determination.
77-5-709. Proportionate ownership of undivided interest in projects; liability of municipality; contracts; issuance of bonds.
77-5-711. Sale or exchange by municipality of excess capacity or output.
77-5-713. Application for licenses, permits, certificates or approvals.
77-5-715. Contracts for exchange, interchange, wheeling, pooling and transmission of electric power.
77-5-717. Creation of joint agencies; application process; issuance of certificate of incorporation.

Sec.
77-5-719. Additional membership in joint agencies; withdrawal from membership.
77-5-721. Board of commissioners of joint agency; officers; quorum; voting; expenses.
77-5-723. Board of commissioners of joint agency; executive committee.
77-5-725. Rights and powers of joint agencies.
77-5-727. Determining appropriateness of projects to be undertaken by joint agencies; objections; appeal process.
77-5-729. Member municipalities may contract to buy power from joint agencies.
77-5-731. Sale or exchange by joint agency of excess capacity or output.
77-5-733. Joint or several ownership and maintenance by municipalities and joint agencies with other public agencies.
77-5-735. Exemption from laws relating to competitive bidding.
77-5-737. Joint agency pledge bonds.
77-5-739. Issuance of bonds by municipalities and joint agencies.
77-5-741. Bonds to be secured by resolution, trust indenture or other security instrument; contents.
77-5-743. Fixing, charging and collecting rents, fees, rates and charges; municipalities.
77-5-745. Fixing, charging and collecting rents, fees, rates and charges; joint agencies.
77-5-747. Pledges made by municipalities or joint agencies.
77-5-749. Temporary investment and reinvestment of money.
77-5-751. Proceedings to enforce rights of holders of bonds.
77-5-753. Bonds issued under this article as proper and legal investments.
77-5-755. Bonds issued as special obligations of municipality or joint agency issuing them.
77-5-757. Refunding bonds.
77-5-759. Tax exempt status; bonds.
77-5-761. Tax exempt status; interest in project owned by municipality or joint agency.
77-5-763. Rights, privileges and immunities of personnel.
77-5-765. Dissolution of joint agencies.
77-5-767. Annual reports; joint agencies; municipalities.
77-5-769. Application of laws of other states and the United States.
77-5-771. Grants-in-aid and loans from federal and state governments.
77-5-773. Eminent domain; crossing lines and rights-of-way of utilities.
77-5-775. Personal liability of certain personnel.
77-5-777. Exemption from requirements of separate actions under this article when governing authorities of utility commission and municipality are same.
77-5-779. Provisions supplemental and additional.
77-5-781. Authority or right of other entities to engage in retail distribution of electric power not impaired.
77-5-783. Construction of article.

§ 77-5-701. Short title.

This article may be cited as the “Joint Municipal Electric Power and Energy Law.”

HISTORY:

Laws, 1978, ch. 363, § 1, eff from and after passage (approved March 14, 1978).

Cross References —

Municipally-owned utilities generally, see §§ 21-27-11 et seq.

Municipalities furnishing electric power generally, see §§ 77-5-401 et seq.

§ 77-5-703. Declaration of purpose.

The legislature of the State of Mississippi hereby finds and determines that:

(a) A critical situation exists with respect to the present and future supply of electric power and energy in the State of Mississippi;

(b) The cost of energy either purchased at wholesale or generated by said electrical utilities has caused the cost of electricity to consumers to increase dramatically during the past few years;

(c) Many municipalities in the state have for many years owned and operated systems for the generation and/or distribution of electric power and energy to customers in their respective areas and are empowered severally to engage in the generation and transmission of electric power and energy.

(d) Such municipalities owning electric generation and/or distribution systems have an obligation to provide their inhabitants and customers the most adequate, reliable and economical source of electric power and energy in the future that may be available to them;

(e) In order to achieve the economies and efficiencies made possible by the proper planning, acquisition, construction, financing, sizing and location of facilities for the generation and/or transmission of electric power and energy which may not be practical for any municipality acting alone, and to insure an adequate, reliable and economical supply of electric power and energy to the people of the state, it is desirable for the State of Mississippi to authorize municipal electric systems and/or joint agencies created pursuant to this article to jointly or severally plan, acquire, construct, finance, develop, own, operate and maintain electric generation and/or transmission facilities with each other, or any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy within this state or any other state, all as may be appropriate to their needs in order to provide for their present and future power requirement for all uses without supplanting or displacing the service at retail of other electric suppliers operating in the state; and

(f) The joint planning, financing, development, ownership and operation of electric generation and/or transmission facilities by municipalities which own electric generation and/or distribution systems or by joint agencies created pursuant to this article and the issuance of revenue bonds for such purposes as provided in this article is for public use and for public and municipal purposes and is a means of achieving economies, adequacy and reliability in the generation and/or transmission of electric power and energy and the meeting of future needs of the state and its inhabitants.

HISTORY:

Laws, 1978, ch. 363, § 2, eff from and after passage (approved March 14, 1978).

Cross References —

Powers of municipalities generally with respect to public utilities, see § 21-27-23.

Powers of municipalities with respect to furnishing electric power generally, see § 77-5-405.

RESEARCH REFERENCES

Am. Jur.

64 Am. Jur. 2d, Public Utilities §§ 63, 86, 97, 149, 198.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 499.

CJS.

29 C.J.S., Electricity §§ 32-39 et seq.

§ 77-5-705. Definitions.

The following terms, whenever used or referred to in this article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Bonds" shall mean electric revenue bonds, notes and other evidences of indebtedness of a joint agency or municipality issued under the provisions of this article and shall include refunding bonds.

(b) "Cost" or "cost of a project" shall mean, but shall not be limited to, all costs of acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project, including the cost of studies, plans, specifications, surveys and estimates of costs and revenues relating thereto; all costs of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, organizational, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; initial and reload fuel costs; all machinery and equipment including construction equipment; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality or joint agency; establishment of reserves; and all other expenditures of the issuing municipality or joint agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the same in operation.

(c) "Governing authorities" shall mean the legislative body, council, board of commissioners, board of aldermen, or other body charged by law with governing the municipality.

(d) "Governing board" shall mean the legislative body, council, board of trustees, board of commissioners or other body charged by law with governing the municipality or joint agency.

(e) "Utility commission" shall mean the legislative body, board of commissioners, utility commission or body charged by law with the control, management and operation of an electric generation, transmission or distribution system, including the board of commissioners of a joint agency organized pursuant to this article.

(f) "Joint agency" shall mean a public body and body corporate and politic organized in accordance with the provisions of this article.

(g) "Municipality" shall mean a city, town or other unit of municipal government created under the laws of the state, or any board, agency or commission thereof, including a joint agency organized pursuant to this article, owning a system or facilities for the generation, transmission or distribution of electric power and energy for public and private uses.

(h) "Project" shall mean any system, facilities, land, works, real property, and/or personal property of every kind or nature now or hereafter existing, or under construction for the generation, transmission and transformation, or any of them, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units, transmission or transformation facilities, or any facility or any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water which may be used or useful in the acquisition, development or supply of electric power and energy, or any interest in the foregoing, whether an undivided interest as a tenant in common or otherwise.

(i) "State" shall mean the State of Mississippi.

HISTORY:

Laws, 1978, ch. 363, § 3; Laws, 1981, ch. 379, § 1, eff from and after passage (approved March 20, 1981).

Cross References —

Joint agency organized pursuant to this article not constituting "affiliate interest" or "affiliate" for purposes of regulation of public utilities, see § 77-3-3.

§ 77-5-707. Powers of municipality; determining power and energy needs; filing of determination.

In addition and supplemental to the powers otherwise conferred on municipalities by the laws of the state, and in order to accomplish the purposes of this article and to obtain a supply of electric power and energy for the present and future needs of its inhabitants and customers, a municipality may plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate and maintain an undivided interest as a tenant in common in a project situated within or without the state jointly with one or more other municipalities, or with a joint agency created pursuant to this article, or with municipal corporations or political subdivisions of other states (to the extent permitted by the laws of such other states), or with any other federal, state or municipal agency which owns electric generation, transmission or distribution facilities or with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy either within or without this state, and may make such plans and enter into such contracts in connection therewith, not inconsistent with the provisions of this article, as are necessary or appropriate.

Prior to acquiring any such undivided interest, the utility commission shall determine the needs of the municipality for power and energy based upon engineering studies and reports, and shall not acquire an undivided interest as a tenant in common in a project in excess of that amount of capacity and the energy associated therewith required to provide for its projected needs for power and energy from and after the date the project is estimated to be placed in normal continuous operation and for such reasonable period of time thereafter as shall be determined by the utility commission. In determining the future power requirements of a municipality, there shall be taken into account the following:

(a) The economies and efficiencies estimated to be achieved in acquiring, constructing and operating the proposed facilities for the generation and transmission of electric power and energy;

(b) The municipality's estimated requirements for power and energy from the project and for reserve capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or may become a party; and

(c) The cost of existing or alternative power supply sources.

A determination by such utility commission approved by the governing authorities as herein provided, based upon appropriate findings of the foregoing matters, shall be conclusive as to the quantity of the interest which a municipality may acquire in a project. Any determination by the utilities commission shall be filed with the governing authorities of the municipality and recorded in the official minutes of the governing authorities. Notice of the filing of such determination shall be published one (1) time in a newspaper having a general circulation in the municipality, and shall specify a date, not less than ten (10) days after the publication of such notice at which the governing authorities of such municipality shall meet to hear any objections or remonstrances that may be made. At said meeting, the governing authorities shall consider the objections or protests, if any, and shall at said meeting or at any adjourned meeting, ratify or reject the determination of the utility commission. Any person or party objecting or protesting the determination at said meeting, who is aggrieved by the ratification thereof, shall file an appeal pursuant to Section 11-51-75.

Nothing herein contained shall prevent a municipality or municipalities from undertaking studies to determine whether there is a need for a project or whether such project is feasible.

For the purposes of this section, the terms "municipality" and "utility commission" shall not include a joint agency or the board of commissioners thereof.

HISTORY:

Laws, 1978, ch. 363, § 4; Laws, 1981, ch. 379, § 2, eff from and after passage (approved March 20, 1981).

RESEARCH REFERENCES

Am. Jur.

18 Am. Jur. Pl & Pr Forms (Rev) Municipal Corporations, Counties, and Other Political Subdivisions, Form 55 (complaint in intervention by public utility for declaratory judgment avoiding ordinance authorizing bonds to pay for proposed municipal light plant).

18 Am. Jur. Pl & Pr Forms (Rev) Municipal Corporations, Counties, and Other Political Subdivisions, Form 112 (complaint by resident to enjoin purchase of public utility as illegal exercise of power and to enjoin issuance of bonds to finance purchase).

§ 77-5-709. Proportionate ownership of undivided interest in projects; liability of municipality; contracts; issuance of bonds.

Each municipality shall own an undivided interest in any project in proportion to the amount of the money furnished the value of property or other consideration supplied by it for the planning, development, acquisition or construction thereof, and shall be entitled to a percentage share of the output and capacity therefrom equal to such undivided interest.

Each municipality shall be severally liable for its own acts and not jointly or severally liable for the acts, omissions or obligations of others, and no money or property or other consideration supplied by any municipality shall be credited or otherwise applied to the account of any other municipality or other tenant in common in the project, nor shall the undivided share of any municipality in a project be charged directly or indirectly with any debt or obligation of any other municipality or other tenant in common or be subject to any lien as a result thereof. The acquisition of a project shall include, but shall not be limited to, the purchase or lease of an existing, completed project and the purchase of a project under construction. A municipality participating in the joint planning, financing, construction, reconstruction, acquisition, improvement, enlargement, betterment, ownership, operation or maintenance of any project under this article may furnish money and provide property, both real and personal, services and other considerations derived solely from the proceeds of bonds or from the ownership and operation of its electric system, or both.

Any contracts entered into by municipalities with respect to joint ownership in a project shall contain such terms, conditions and provisions, not inconsistent with the provisions hereof, as the utility commission of the municipalities shall deem to be in the interests of the municipalities and shall be spread upon the minutes of said utility commission. Any such contracts shall be ratified by resolution of the governing authorities of each municipality spread upon its minutes. Any such contracts shall include, but shall not be limited to, the following:

(a) The purpose or purposes of the contract;

(b) The duration of the contract;

(c) The manner of appointing or employing the personnel necessary in connection with the project;

(d) The method of financing the project, including the apportionment of costs and revenues;

(e) Provisions specifying the ownership interests of the parties in real property used or useful in connection with the project, and the procedures for the disposition of such property when the contract expires, is terminated or when the project, for any reason, is abandoned, decommissioned or dismantled;

(f) Provisions relating to alienation and prohibiting partition of a municipality's undivided interest in a project, which provisions shall not be subject to any provision of law restricting covenants against alienation or partition;

(g) Provisions for the construction of a project, which may include the determination that one (1) municipality jointly participating or any person, firm or corporation may construct the project as agent for all the parties;

(h) Provisions for the operation and maintenance of a project, which may include the determination that one (1) municipality jointly participating or any person, firm or corporation may operate and maintain the project as agent for all the parties;

(i) Provisions for the creation of a committee of representatives of the parties jointly participating with such powers of supervision of the construction and operation of the project as the contract, not inconsistent with the provisions of this article, may provide;

(j) Provisions that if one or more of the parties shall default in the performance or discharge of its or their obligations with respect to the project, the other party or one or more of the other parties may assume, pro rata, or otherwise, the obligations of such defaulting party or parties and may succeed to such rights and interests of the defaulting party or parties in the project as may be agreed upon in the contract;

(k) Methods of amending the contract;

(*l*) Methods for terminating the contract; and

(m) Any other necessary or proper matter.

For the purpose of paying its respective share of the cost of a project or projects, a municipality may issue its bonds as provided in this article, and, notwithstanding the provisions of any other law to the contrary, may pledge to the payment of the principal of, premium, if any, and interest on such bonds, the revenues or any portion thereof derived or to be derived from the ownership and operation of its system or facilities for the generation, transmission or distribution of electric power or energy or its interest in any joint project or projects, or a combination of such revenues. Provided, that all bonds issued under the provisions of this article shall be authorized and issued by the governing authorities of a city, town or other unit of municipal government created under the laws of this state.

HISTORY:

Laws, 1978, ch. 363, § 5, eff from and after passage (approved March 14, 1978).

Cross References —

Bonds issued by municipalities to furnish electric power generally, see §§ 77-5-407 et seq.

RESEARCH REFERENCES

ALR.

Liability of electric utility to nonpatron for interruption or failure of power. 54 A.L.R.4th 667.

Liability of electric company to one other than employee for injury or death arising from commencement or resumption of service. 46 A.L.R.5th 423.

Am. Jur.

18 Am. Jur. Pl & Pr Forms (Rev) Municipal Corporations, Counties, and Other Political Subdivisions, Form 55 (complaint in intervention by public utility for declaratory judgment avoiding ordinance authorizing bonds to pay for proposed municipal light plant).

18 Am. Jur. Pl & Pr Forms (Rev) Municipal Corporations, Counties, and Other Political Subdivisions, Form 112 (complaint by resident to enjoin purchase of public utility as illegal exercise of power and to enjoin issuance of bonds to finance purchase).

§ 77-5-711. Sale or exchange by municipality of excess capacity or output.

Capacity or output or related services derived by a municipality from its ownership share of a project not then required by such municipality for its own use and for the use of its consumers may be sold or exchanged by such municipality, for such consideration and for such period and upon such other terms and conditions as may be determined by the parties, either within or without the state, to any state, federal or municipal or private agency or corporation, including joint agencies created pursuant to this article and to any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy within this state or any other state. Provided, however, that sales of excess capacity or output of a project to electric power associations, public utilities and other persons, the interest on whose securities and other obligations is not exempt from taxation by the federal government, shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government.

HISTORY:

Laws, 1978, ch. 363, § 6, eff from and after passage (approved March 14, 1978).

Cross References —

Sale or exchange by joint agency of excess capacity or output, see § 77-5-731.

§ 77-5-713. Application for licenses, permits, certificates or approvals.

Municipalities proposing to jointly plan, finance, develop, own and operate a project are hereby authorized, either jointly or separately, to apply to the appropriate agencies of the state, the United States, or any state thereof, and to any other proper agency for such licenses, permits, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other operating unit of any other person; provided, however, nothing herein contained shall be construed to require a municipality to obtain any license, certificate, permit, or approval from the public service commission of Mississippi.

HISTORY:

Laws, 1978, ch. 363, § 7, eff from and after passage (approved March 14, 1978).

§ 77-5-715. Contracts for exchange, interchange, wheeling, pooling and transmission of electric power.

Municipalities participating in a joint project or projects are hereby authorized to enter into contracts for the exchange, interchange, wheeling, pooling and transmission of electric power and energy produced by such project or projects with any municipality of this state or any other state owning electric distribution facilities, any electric power association, or any public or private utility, or any state, federal or municipal agency which owns electric generation, transmission or distribution facilities in this state or any other state.

HISTORY:

Laws, 1978, ch. 363, § 8, eff from and after passage (approved March 14, 1978).

§ 77-5-717. Creation of joint agencies; application process; issuance of certificate of incorporation.

The utility commissions of two (2) or more municipalities may, by resolution or ordinance, determine that it is in the best interests of the municipalities in accomplishing the purposes of this article to create a joint agency as prescribed herein for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation and maintenance of a project or projects to supply electric power and energy for their present or future needs as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project. In determining whether or not the creation of a joint agency for such purpose is in the best interests of the municipalities, the utility commissions shall take into consideration, but shall not be limited to, the following:

(a) Whether or not a separate entity may be able to finance the cost of projects in a more efficient and economical manner;

(b) Whether or not better financial market acceptance may result if one (1) entity is responsible for issuing all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating instead of multiple entities issuing separate issues of bonds;

(c) Whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership and operation of a project or projects; and

(d) Whether or not the existence of such a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be derived from such joint planning and undertaking.

If each utility commission shall determine that it is in the best interest of the municipality to create a joint agency to provide power and energy to the municipality as provided in this article, each shall adopt a resolution so finding (which need not prescribe in detail the basis for the determination) and which shall set forth the names of the municipalities which are proposed to be initial members of the joint agency. Said resolution shall be certified to the governing authorities who shall thereupon disapprove or ratify the determination of said utility commission by resolution or ordinance spread upon its official minutes. The governing authority shall cause notice of such determination to be given to the presiding officer of the utility commission of the municipality, which utility commission shall thereupon appoint in writing one (1) commissioner of the joint agency, which commissioner may, in the discretion of the utility commission be an officer or employee of the municipality.

Any two (2) or more commissioners so named may file with the secretary of state an application signed by them setting forth (i) the names of all proposed member municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each utility commission of each respective municipality appointing a commissioner has made the aforesaid determination; (v) a statement that each governing authority of each respective municipality has ratified the determination of the utility commission; (vi) the desire that a joint agency be organized as a public body and a body corporate and politic under this article; and (vii) the name which is proposed for the joint agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the state to administer and certify oaths, and shall be accompanied by a fee in the amount of fifty dollars ($50.00) payable to the secretary of state as a filing fee.

The secretary of state shall examine the application and, if he finds that the name proposed for the joint agency is not identical with that of any other corporation of this state or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The secretary of state shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this article under the seal of the state, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint agency, the joint agency, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member municipalities by the secretary of state. If a commissioner of any such municipality has not signed the application to the secretary of state and such municipality does not notify the secretary of state of the appointment of a commissioner within forty (40) days after receipt of such notice, such municipality shall be deemed to have elected not to be a member of the joint agency. As soon as practicable after the expiration of such period of forty (40) days, the secretary of state shall issue a new certificate of incorporation, if necessary, setting forth the names of those municipalities which have elected to become members of the joint agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint agency.

HISTORY:

Laws, 1978, ch. 363, § 9(1), eff from and after passage (approved March 14, 1978).

§ 77-5-719. Additional membership in joint agencies; withdrawal from membership.

After the creation of a joint agency, any other municipality may become a member thereof upon application to such joint agency after the adoption of a resolution by the utility commission of the municipality setting forth the determination and finding prescribed in Section 75-5-717, and the adoption by the governing authorities of the municipality of a resolution or ordinance ratifying the determination of the utility commission and authorizing said municipality to participate, and with the unanimous consent of the members of the joint agency evidenced by the resolutions of their respective utility commissions. Any municipality may withdraw from a joint agency, provided, however, that all contractual rights acquired and obligations incurred while a municipality was a member shall remain in full force and effect.

HISTORY:

Laws, 1978, ch. 363, § 9(2), eff from and after passage (approved March 14, 1978).

Editor's note—

The reference to "Section 75-5-717" above should probably be to "Section 77-5-717."

§ 77-5-721. Board of commissioners of joint agency; officers; quorum; voting; expenses.

The joint agency shall consist of a board of commissioners appointed by the respective utility commissions of the municipalities which are members of the joint agency. Each municipality shall appoint one (1) commissioner who may, at the discretion of the municipality, be an officer or employee of the municipality, the appointment to be made by resolution. Each commissioner shall have not less than one (1) vote and may have in addition thereto such additional votes as the utility commissions of a majority of the municipalities which are members of the joint agency shall determine. After any initial determination of the number of additional votes which the commissioners may have has been made, such additional votes shall not thereafter be changed except by unanimous consent of the municipalities which are members of the joint agency. Each commissioner shall serve at the pleasure of the utility commission by which he was appointed. Each appointed commissioner before entering upon his duties shall enter into bond with a corporate surety in an amount not less than ten thousand dollars ($10,000.00), conditioned on the faithful performance of his duties, and shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and such bond and oath shall be filed with the governing authority of the appointing municipality and spread upon its minutes. The premiums on such bonds shall be paid by the joint agency.

The board of commissioners of the joint agency shall annually elect one (1) of the commissioners as chairman, another as vice chairman, and another person or persons, who may but need not be commissioners, as treasurer, secretary, and if desired, assistant secretary. The treasurer shall enter into bond with a corporate surety in such amount of not less than twenty-five thousand dollars ($25,000.00), as may be determined by the commissioners. The office of treasurer may be held by the secretary or assistant secretary. The board of commissioners may also appoint such additional officers as it deems necessary. The secretary or assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency, and the secretary shall be the custodian of all records, books, documents and papers filed with the joint agency, the minute book or journal of the joint agency and its official seal. Either the secretary or the assistant secretary of the joint agency may cause copies to be made of all minutes and other records and documents of the joint agency and may give certificates under the official seal of the joint agency to the effect that such copies are true copies, and all persons dealing with the joint agency may rely upon such certificates.

A majority of the commissioners of a joint agency then in office shall constitute a quorum. A vacancy in the board of commissioners of the joint agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint agency. Any action taken by the joint agency under the provisions of this article may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted. A majority of the votes which the commissioners present are entitled to cast shall be necessary and sufficient to take any action or to pass any resolution, provided that such commissioners present are entitled to cast a majority of the votes of all commissioners of the board.

No commissioner of a joint agency shall receive any compensation for the performance of his duties hereunder, provided, however, that each commissioner may be paid his necessary expenses incurred while engaged in the performance of such duties.

HISTORY:

Laws, 1978, ch. 363, § 9(3) to (6), eff from and after passage (approved March 14, 1978).

§ 77-5-723. Board of commissioners of joint agency; executive committee.

The board of commissioners of a joint agency may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member municipalities. The executive committee shall have and exercise such of the powers and authority of the board of commissioners during intervals between the board's meetings as may be prescribed by its rules, motions or resolutions. The terms of office of the members of the executive committee and the method of filling vacancies therein shall be fixed by the rules of the board of commissioners of the joint agency.

HISTORY:

Laws, 1978, ch. 363, § 10, eff from and after passage (approved March 14, 1978).

§ 77-5-725. Rights and powers of joint agencies.

Each joint agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including, but without limiting the generality of the foregoing, the rights and powers:

(a) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(b) To adopt an official seal and alter the same at pleasure;

(c) To maintain an office at such place or places as it may determine;

(d) To sue and be sued in its own name, and to plead and be impleaded;

(e) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(f) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

(g) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(h) To pledge or assign any money, rents, charges or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation awards;

(i) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes;

(j) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate and maintain, one or more projects, either individually or jointly, with one or more municipalities in this state or any other state owning electric distribution facilities or with any political subdivision, agencies or instrumentalities of any state, or with any one or more joint agencies created pursuant to this article, or any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy within this state or any other state, and to pay all or any part of the costs thereof from the proceeds of bonds of the joint agency or from any other funds made available to the joint agency;

(k) To authorize the construction, operation or maintenance of any project or projects by any person, firm or corporation, including political subdivisions and agencies of any state, or of the United States;

(*l*) To acquire by lease, purchase or otherwise an existing project or a project under construction, or any interest therein, or portion thereof;

(m) With the unanimous consent of the member municipalities, to sell or otherwise dispose of any project or projects, or any interest therein or portion thereof. The member municipalities may enter into an agreement with the joint agency whereby certain types of property may be traded or otherwise disposed of without unanimous consent of the member municipalities;

(n) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities and commodities sold, furnished or supplied through any project;

(o) To generate, produce, transmit, deliver, exchange, purchase or sell for resale only, electric power or energy, and to enter into contracts for any or all such purposes;

(p) To negotiate and enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy with any municipality in this state or any other state owning electric distribution facilities, or with any political subdivisions, agencies or instrumentalities of any other state or with other joint agencies created pursuant to this article, any electric power association, any public or private utility, and any state, federal or municipal agency which owns electric generation, transmission or distribution facilities in this state or any other state;

(q) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this article, including contracts with persons, firms, corporations and others;

(r) To apply to the appropriate agencies of the state, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with, and to obtain, hold and use, such licenses, permits, certificates or approvals in the same manner as any other person or operating unit of any other person; provided, however, nothing herein contained shall be construed to require the joint agency to obtain any permit, license, certificate or approval from the Public Service Commission of Mississippi;

(s) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor;

(t) To purchase all kinds of insurance including, but not limited to, insurance against business interruption, and/or risks of damage to property;

(u) To purchase power and energy and related services from any source on behalf of its members and other customers and to sell the same to its members and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the board of commissioners shall determine; and

(v) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint agency herein.

HISTORY:

Laws, 1978, ch. 363, § 11(1); Laws, 1979, ch. 350; Laws, 1981, ch. 380, § 1; Laws, 1984, ch. 495, § 34; reenacted and amended, Laws, 1985, ch. 474, § 31; Laws, 1986, ch. 438, § 48; Laws, 1987, ch. 483, § 49; Laws, 1988, ch. 442, § 46; Laws, 1989, ch. 537, § 44; Laws, 1990, ch. 518, § 45; Laws, 1991, ch. 618, § 46; Laws, 1992, ch. 491, § 48, eff from and after passage (approved May 12, 1992).

Cross References —

Immunity of state and political subdivisions from liability and suit for torts and torts of its employees, see §§ 11-46-1 et seq.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the state fiscal management board (now the department of finance and administration), see § 11-46-17.

JUDICIAL DECISIONS

1. In general.

Joint municipal energy agency created under Joint Municipal Electric Power and Energy Law (§§ 77-5-701 et seq.) need not obtain certificate of public convenience and necessity from Mississippi Public Service Commission for purpose of construction of electric generating facilities. Mississippi Public Service Com. v. Municipal Energy Agency, 463 So. 2d 1056, 1985 Miss. LEXIS 1870 (Miss. 1985).

OPINIONS OF THE ATTORNEY GENERAL

The Municipal Energy Agency of Mississippi is not vested with specific authority to reimburse employees for educational costs and fees, but since it is vested with the power to employ such employees as may be required and to fix their compensation, it may include provisions for the reimbursement of education costs and fees as part of an employee's future compensation. 1998 Miss. Op. Att'y Gen. 50.

§ 77-5-727. Determining appropriateness of projects to be undertaken by joint agencies; objections; appeal process.

No joint agency shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of a majority of its members. Before undertaking any project, a joint agency shall, based upon engineering studies and reports, determine that such project is required to provide for the projected needs for power and energy of its members from and after the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. In determining the future power requirements of the members of a joint agency, there shall be taken into account the following:

(a) The economies and efficiencies estimated to be achieved in acquiring, constructing and operating the proposed facilities for the generation and transmission of electric power and energy;

(b) The estimated requirements for power and energy and for reserve capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party; and

(c) The cost of such existing alternative power supply sources.

A determination by the joint agency based upon appropriate findings of the foregoing matters shall be conclusive as to the appropriateness of a project to provide the needs of the members of a joint agency for power and energy unless an interested party aggrieved by the determination of said joint agency shall file an appeal therefrom as herein provided. Notice of the determination by the joint agency shall be published one (1) time in one or more newspapers having general circulation in each of the municipalities constituting the membership of the joint agency and shall specify a date, not less than ten (10) days after the publication of such notice, at which the joint agency shall meet to hear any objections or remonstrances that may be made. At said meeting, the commissioners of the joint agency shall consider the objections or protests, if any, and shall at said meeting, or at any adjourned meeting, affirm, modify or rescind the determination. Any person or party objecting or protesting the determination at said meeting who is aggrieved by the action of said joint agency may appeal within ten (10) days from the date of adjournment at which session the joint agency rendered said determination, and may embody the facts and determination in a bill of exceptions which shall be signed by the person acting as chairman of the board of commissioners of the joint agency. The secretary thereof shall transmit at once the bill of exceptions to the circuit court of the county in which the principal office of the joint agency is located, and the court shall either in termtime or in vacation hear and determine the same on the case as presented by the bill of exceptions as an appellate court, and shall affirm or reverse the determination of the joint agency. If the determination of the joint agency be reversed, the circuit court shall certify the same to the board of commissioners of the joint agency. Costs shall be awarded as in other cases. The joint agency may employ counsel to defend such appeals to be paid out of the funds of the joint agency. Any such appeal may be heard and determined in vacation in the discretion of the court on motion of either party on written notice of ten (10) days to the other party or parties or the attorney of record, and the hearing of the same shall be held in the county where the suit is pending unless the judge in his order shall otherwise direct. Provided, however, no appeal to the circuit court shall be taken from any order or determination of the joint agency which authorizes the issuance or sale of bonds, but all objections to any matters relating to the issuance or sale of bonds shall be adjudicated and determined by the chancery court, in accordance with the provisions of Sections 31-13-5 through 31-13-11.

Nothing herein contained shall prevent a joint agency from undertaking studies to determine whether there is a need for a project or whether such project is feasible.

HISTORY:

Laws, 1978, ch. 363, § 11(2), eff from and after passage (approved March 14, 1978).

§ 77-5-729. Member municipalities may contract to buy power from joint agencies.

Any municipality which is a member of the joint agency may contract to buy from the joint agency power and energy required for its present or future requirements, including the capacity and output of one or more specified projects. As the creation of a joint agency is an alternative method whereby a municipality may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the municipality so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable, operating, retired or decommissioned and notwithstanding the suspension, interruption, interference, reduction, curtailment or termination of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or any other member of the joint agency under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities may also provide that if one or more of such municipalities shall default in the payment of its or their obligations, with respect to the purchase of said capacity or output, then in that event the remaining member municipalities which are purchasing capacity and output under the contract shall be required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality.

Notwithstanding the provisions of any other law to the contrary, any such contracts with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding fifty (50) years from the date a project is estimated to be placed in normal continuous operation; and the execution and effectiveness thereof shall not be subject to any authorizations or approvals by the state or any agency, commission or instrumentality or political subdivision thereof except as in this article specifically required and provided.

Payments by a municipality under any contract for the purchase of capacity and output from a joint agency shall be made solely from the revenues derived from the ownership and operation of the electric system of said municipality and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the municipality or upon any of its income, receipts or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the municipality are, or may be, pledged for the payment of any obligation under any such contract. A municipality shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities, sold, furnished or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on bonds heretofore or hereafter issued by the municipality for purposes related to its electric system.

Any municipality which is a member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and may make available for the use of the joint agency any personnel, equipment and property, both real and personal, which is a part of its electric system or facilities.

Any member of a joint agency may contract for, advance or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and the member, and the joint agency shall repay such advances or contributions from proceeds of bonds, from operating revenues or from any other funds of the joint agency, together with interest thereon as may be agreed upon by the member and the joint agency.

HISTORY:
Laws, 1978, ch. 363, § 12, eff from and after passage (approved March 14, 1978).

§ 77-5-731. Sale or exchange by joint agency of excess capacity or output.

A joint agency may sell or exchange the excess capacity or output of a project not then required by any of its members for such consideration and for such period and upon such other terms and conditions as may be determined by the parties to any municipality in this state or any other state owning electric distribution facilities, to any political subdivisions, agencies or instrumentalities of any other state, to other joint agencies organized pursuant to this article, to any electric power association, to any public or private utility, or to any other state, federal or municipal agency which owns electric generation, transmission or distribution facilities either within or without this state. Provided, however, that sales of excess capacity or output of a project to electric power associations, public or private utilities, and other persons the interest on whose securities and other obligations are not exempt from taxation by the federal government shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government.

HISTORY:
Laws, 1978, ch. 363, § 13; Laws, 1981, ch. 280, § 2, eff from and after passage (approved March 20, 1981).

Cross References —
Sale or exchange by municipality of excess capacity or output, see § 77-5-711.

§ 77-5-733. Joint or several ownership and maintenance by municipalities and joint agencies with other public agencies.

The definitions and all other terms and provisions of this article shall be construed so as to include and authorize the joint or several ownership, operation, and/or maintenance by one or more municipalities or joint agencies of a project, or any undivided ownership interest therein, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power or energy either within or without this state.

HISTORY:
Laws, 1978, ch. 363, § 14, eff from and after passage (approved March 14, 1978).

§ 77-5-735. Exemption from laws relating to competitive bidding.

A municipality's or joint agency's purchase of, contract for the acquisition of, or contract for any property, including any project or interest therein, or the construction of, or the operation and maintenance of, any project, owned or to be owned jointly by such municipality or joint agency with any person, firm or corporation engaged in the generation, transmission or distribution of electricity, either within or without this state, other than with a municipality of this state or a joint agency created pursuant to this article, may be made or entered into without meeting the requirements of any law relating to acquisitions, purchases or contracts by competitive bids where the interest to be acquired by such municipality or joint agency in such property or project is twenty-five percent (25%) or less.

If a municipality or joint agency which finds and records on its minutes that acquisition of any project, or any interest therein, or any portion thereof, or any property or any interest therein or any portion thereof, which is authorized by this article is available or can be acquired or contracted for from or with only a single source, person, firm or corporation, then such acquisition or contract may be made or entered into without meeting the requirements of any law relating to acquisitions, purchases or contracts by competitive bids. If, after advertising for competitive bids as to other proposed purchases, acquisitions or contracts, only one (1) bid is received, the municipality or joint agency, as the case may be, may reject the bid and negotiate privately any purchase, contract or acquisition for a consideration not exceeding that proposed in the bid.

HISTORY:
Laws, 1978, ch. 363, § 15; Laws, 1979, ch. 391, eff from and after passage (approved March 19, 1979).

§ 77-5-737. Joint agency pledge bonds.

A joint agency may issue its bonds pledging to the payment thereof as to both principal and interest the revenues or any portion thereof, derived or to be derived from all or any of its projects, and any additions and betterments thereto or extensions thereof, or contributions or advances from its members. Bonds of a joint agency shall be authorized by a resolution adopted by its governing board and spread upon its minutes.

HISTORY:
Laws, 1978, ch. 363, § 16, eff from and after passage (approved March 14, 1978).

Cross References —
Bonds issued by municipalities to furnish electric power generally, see §§ 77-5-407 et seq.

§ 77-5-739. Issuance of bonds by municipalities and joint agencies.

(1) Each municipality and joint agency is hereby authorized to issue at one (1) time or from time to time its bonds for the purpose of paying all or any

part of the cost of any of the purposes authorized by this article. The principal of, premium, if any, and the interest on such bonds shall be payable solely from the respective funds herein provided for such payment. The bonds of each issue shall bear interest at such rate or rates as may be determined by the issuer, provided that the bonds of any issue shall not bear a greater overall interest rate to maturity than that allowed in Section 75-17-103. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, either as serial bonds or term bonds or a combination of serial and term bonds, not exceeding fifty (50) years from their respective date or dates, as may be determined by the governing board of the issuer, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the governing board of the issuer prior to the issuance of the bonds. The governing board of the issuer shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The governing board of the issuer may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing board of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. No bond shall bear more than one (1) rate of interest. All bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

All bonds issued pursuant to this article shall be advertised and sold on sealed bids in the manner provided under the provisions of Section 31-19-25; provided that on bond sales in excess of Fifty Million Dollars ($50,000,000.00) the joint agency may sell its bonds by negotiated sale at not less than ninety-eight percent (98%) of par, plus accrued interest, when the joint agency has employed a nationally recognized financial advisor for the proposed bond issue. The duties of the financial advisor shall include the responsibility of preparing a statement to be submitted to the Governor, the chairman of the house ways and means committee and the chairman of the senate finance committee which shall clearly set forth the reasons why the negotiated sale was considered to be in the best interest of the joint agency and member municipalities, including the estimated savings in cost by selling the bonds at a negotiated sale.

(2) The proceeds of the bonds of each issue shall be used solely for the purposes for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the governing board of the issuer may provide in the resolution authorizing the issuance of such bonds. The municipality or joint agency may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The municipality or joint agency may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed or lost.

(3) Bonds may be issued under the provisions of this article without obtaining the consent of the state or of any political subdivision, or of any agency, commission or instrumentality of either thereof, and without any other approvals, proceedings or the happening of any conditions or things other than those approvals, proceedings, conditions or things which are specifically required by this article and the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same; provided, however, no joint agency created pursuant to the article shall issue any bonds pursuant to the article, unless and until the issuance of said bonds is approved by each of the governing authorities of the municipalities which are members of the joint agency.

(4) All bonds issued pursuant to this article shall be fully negotiable in accordance with their terms and shall be "securities" within the meaning of Article 8 of the Uniform Commercial Code, subject only to provisions of the bonds pertaining to registration.

(5) The state hereby covenants with the holders of any bonds issued pursuant to this article that so long as such bonds are outstanding and unpaid the state will not terminate the existence of nor limit or alter the rights and powers of a municipality or a joint agency under this article to conduct the activities referred to herein in any way pertinent to the interests of the bondholders, including, without limitation, the right to charge and collect rates, fees and charges and to fulfill the terms of any covenants made with bondholders, or in any way impair the rights and remedies of the bondholders, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or other security instrument securing the bonds.

HISTORY:

Laws, 1978, ch. 363, § 17; Laws, 1979, ch. 496; Laws, 1981, ch. 329, § 1; Laws, 1985, ch. 477, § 19, eff from and after passage (approved April 8, 1985).

Cross References —

Article 8 of the Uniform Commercial Code, see § 75-8-101 et seq.

Bonds issued by municipalities to furnish electric power generally, see §§ 77-5-407 et seq.

RESEARCH REFERENCES

Am. Jur.

18 Am. Jur. Pl & Pr Forms (Rev) Municipal Corporations, Counties, and Other Political Subdivisions, Form 55 (complaint in intervention by public utility for declaratory judgment avoiding ordinance authorizing bonds to pay for proposed municipal light plant).

18 Am. Jur. Pl & Pr Forms (Rev) Municipal Corporations, Counties, and Other Political Subdivisions, Form 112 (complaint by resident

to enjoin purchase of public utility as illegal exercise of power and to enjoin issuance of bonds to finance purchase).

§ 77-5-741. Bonds to be secured by resolution, trust indenture or other security instrument; contents.

In the discretion of the governing board of the issuer, any bonds issued under the provisions of this article may be secured by a resolution, a trust indenture or other security instrument, and in this regard the issuer may enter into an agreement with any trust company or bank having the powers of a trust company within or without the state to act as trustee for such bonds. Such resolution, trust indenture or other security instrument providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders.

The resolution, trust indenture or other security instrument providing for the issuance of such bonds may, in the discretion of the governing board of the issuer, contain covenants including, but not limited to, the following:

(a) The pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds or from the electric system or facilities of a municipality or a joint agency.

(b) The rents, rates, fees and charges to be established, maintained and collected, and the use and disposal of revenues, gifts, grants and funds received or to be received by the municipality or joint agency.

(c) The setting aside of reserves and the investment, regulation and disposition thereof.

(d) The custody, collection, securing, investment, and payment of all moneys held for the payment of bonds.

(e) Limitations or restrictions on the purposes to which the proceeds of sale of bonds then or thereafter to be issued may be applied.

(f) Limitations or restrictions on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, or the refunding of outstanding or other bonds.

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent thereto and the manner in which such consent may be given.

(h) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this article shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(i) The preparation and maintenance of a budget.

(j) The retention or employment of consulting engineers, independent auditors and other technical consultants.

(k) Limitations on or the prohibition of free service to any person, firm or corporation, public or private.

(*l*) The acquisition and disposal of property, provided that no project or part thereof shall be mortgaged by such resolution, trust indenture or other security instrument.

(m) Provisions for insurance and for accounting reports and the inspection and audit thereof.

(n) The continuing operation and maintenance of the project.

HISTORY:
Laws, 1978, ch. 363, § 18; Laws, 1981, ch. 383, § 1, eff from and after passage (approved March 20, 1981).

Cross References —
Bonds issued by municipalities to furnish electric power generally, see §§ 77-5-407 et seq.

Issuance of bonds by municipalities jointly furnishing electric power, see §§ 77-5-709, 77-5-737 et seq.

§ 77-5-743. Fixing, charging and collecting rents, fees, rates and charges; municipalities.

A municipality is hereby authorized to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of its electric system or its interest in any joint project. For so long as any bonds of a municipality are outstanding and unpaid, the rents, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its electric system, and its interest in any joint project, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution authorizing and securing bonds, to pay when due the principal of, premium, if any, and interest on all bonds heretofore or hereafter issued to finance additions, improvements and betterments to its electric system, and to pay any and all amounts which the municipality may be obligated to pay from said revenues by law or contract. Nothing herein contained shall be construed to prohibit any municipality from expending any revenues in excess of that required herein in any manner otherwise permitted by law.

HISTORY:
Laws, 1978, ch. 363, § 19(1), eff from and after passage (approved March 14, 1978).

Cross References —
Fixing, charging and collecting rents, fees, rates and charges with respect to joint agencies, see § 77-5-745.

RESEARCH REFERENCES

Practice References.
Accounting for Public Utilities (Matthew Bender).

§ 77-5-745. Fixing, charging and collecting rents, fees, rates and charges; joint agencies.

A joint agency is hereby authorized to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of its projects. For so long as any bonds of a joint agency are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution authorizing and securing bonds, and to pay any and all amounts which the joint agency may be obligated to pay from said revenues by law or contract.

HISTORY:
Laws, 1978, ch. 363, § 19(2), eff from and after passage (approved March 14, 1978).

Cross References —
Fixing, charging and collecting rents, fees, rates and charges with respect to municipalities, see § 77-5-743.

RESEARCH REFERENCES

Practice References.
Robert L. Hahne, Accounting for Public Utilities (Matthew Bender).

§ 77-5-747. Pledges made by municipalities or joint agencies.

Any pledge made by a municipality or joint agency pursuant to this article shall be valid and binding from the date the pledge is made. The revenues, securities and other moneys so pledged and then held or thereafter received by the municipality or joint agency or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the municipality or joint agency without regard to whether such parties have notice thereof. The resolution trust indenture or other security instrument by which a pledge is created need not be filed or recorded in any manner.

HISTORY:
Laws, 1978, ch. 363, § 19(3); Laws, 1981, ch. 383, § 2, eff from and after passage (approved March 20, 1981).

§ 77-5-749. Temporary investment and reinvestment of money.

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues may be temporarily invested and reinvested pending the disbursements thereof in such securities and other investments as may be permitted by law for investment of excess funds of municipalities.

HISTORY:
Laws, 1978, ch. 363, § 20, eff from and after passage (approved March 14, 1978).

§ 77-5-751. Proceedings to enforce rights of holders of bonds.

Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder, or, to the extent permitted by law, under such resolution authorizing the issuance of such bonds or under any agreement or other contract executed by the municipality or joint agency pursuant to this article, and may enforce and compel the performance of all duties required by this article or by such resolution to be performed by any joint agency or municipality or by any officer thereof, including the fixing, charging and collecting of rents, rates, fees and charges.

HISTORY:
Laws, 1978, ch. 363, § 21, eff from and after passage (approved March 14, 1978).

Cross References —
Rights and remedies of bondholders when municipalities furnish electric power, see §§ 77-5-417, 77-5-419.

§ 77-5-753. Bonds issued under this article as proper and legal investments.

Bonds issued by a municipality or joint agency under the provisions of this article are hereby made securities in which all public officers and agencies of the state and all political subdivisions, all insurance companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the state or any political subdivision for any purpose for which the deposit of bonds or obligations of the state or any political subdivision is now or may hereafter be authorized by law.

HISTORY:
Laws, 1978, ch. 363, § 22, eff from and after passage (approved March 14, 1978).

§ 77-5-755. Bonds issued as special obligations of municipality or joint agency issuing them.

The bonds shall be special obligations of the municipality or joint agency issuing them. The principal of, premium, if any, and interest on the bonds shall not be payable from the general funds of the municipality or joint agency, nor shall they constitute a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues, except the funds which are pledged under the resolution authorizing the bonds. Neither the faith and credit nor the taxing power of a municipality or of the state are, or may be, pledged for the payment of the principal of or interest on the bonds, and no holder of the bonds shall have the right to compel the exercise of the taxing power by the state or a municipality or the forfeiture of any of its property in connection with any default thereon. Every bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the municipality or joint agency is not obligated to pay the principal or interest except from such revenues.

HISTORY:
Laws, 1978, ch. 363, § 23, eff from and after passage (approved March 14, 1978).

§ 77-5-757. Refunding bonds.

A municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds of the municipality or joint agency for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the municipality or joint agency in respect to the same shall be governed by the provisions of this article which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor.

HISTORY:
Laws, 1978, ch. 363, § 24, eff from and after passage (approved March 14, 1978).

§ 77-5-759. Tax exempt status; bonds.

Bonds, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the state or any political subdivision or any agency of either thereof, excepting inheritance, estate or gift taxes.

HISTORY:
Laws, 1978, ch. 363, § 25, eff from and after passage (approved March 14, 1978).

§ 77-5-761. Tax exempt status; interest in project owned by municipality or joint agency.

Any interest in a project owned by a municipality or owned by a joint agency shall be exempt from all state, county and local ad valorem or other property taxes. The purchase, exchange or interchange of capacity, transmission, or electric power and energy for resale by any municipality or joint agency under this article shall not be subject to sales, use or other tax. The sale of any electric power or energy from any project to any municipality shall not be subject to sales, use or other tax.

HISTORY:

Laws, 1978, ch. 363, § 26, eff from and after passage (approved March 14, 1978).

RESEARCH REFERENCES

Practice References.

Taxation of Public Utilities (Matthew Bender).

§ 77-5-763. Rights, privileges and immunities of personnel.

Personnel employed or appointed by a municipality to work on a joint project or for a joint agency shall have the same authority, rights, privileges and immunities which the officers, agents and employees of the appointing municipality enjoy within the territory of that municipality, whether within or without the territory of the appointing municipality, when they are acting within the scope of their authority or in the course of their employment.

Personnel employed or appointed directly by a joint agency or by a participating municipality or by a nonprofit operating agency of the participating municipalities or of the joint agency, shall be eligible for participation in the Mississippi Public Employees Retirement System with the same rights, privileges, obligations and responsibilities as they would have if they were employees of a municipality.

HISTORY:

Laws, 1978, ch. 363, § 27, eff from and after passage (approved March 14, 1978).

RESEARCH REFERENCES

ALR.

Liability of electric utility to nonpatron for interruption or failure of power. 54 A.L.R.4th 667.

Liability of electric company to one other than employee for injury or death arising from commencement or resumption of service. 46 A.L.R.5th 423.

§ 77-5-765. Dissolution of joint agencies.

Whenever the board of commissioners of a joint agency and the utility commissions of its member municipalities shall by resolution or ordinance determine that the purposes for which the joint agency was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the joint agency have been fully paid or satisfied, such board of commissioners and utility commissions may declare the joint agency to be dissolved. On the effective date of such resolution or ordinance, the title to all funds and other property owned by the joint agency at the time of such dissolution shall vest in the member municipalities of the joint agency as provided in this article and the bylaws of the joint agency.

HISTORY:
Laws, 1978, ch. 363, § 28, eff from and after passage (approved March 14, 1978).

§ 77-5-767. Annual reports; joint agencies; municipalities.

Each joint agency shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to the governing authorities and to the utility commissions of its member municipalities. Each such report shall set forth a complete operating and financial statement covering the operations of the joint agency during such year. The joint agency shall cause an audit of its books of record and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction of a project or projects, or otherwise as part of the expense of administration of a project covered by such audit.

The municipalities possessing ownership interests in a project shall, following the closing of each fiscal year, submit a consolidated or combined annual report of their activities with respect to such project for the preceding year to the respective governing authorities of such municipalities, each such report shall set forth a complete operating and financial statement covering the operations of the jointly owned project during such year. The municipalities possessing ownership interests in a project shall cause an audit or the books of record and accounts relating to such project to be made at least once in each year by certified public accountants and the cost thereof may be treated as a cost of construction of the project, or otherwise as part of the expenses of the administration of the project covered by such audit.

HISTORY:
Laws, 1978, ch. 363, § 29, eff from and after passage (approved March 14, 1978).

Cross References —
Records and reports of boards of public utilities, see § 77-5-439.

RESEARCH REFERENCES

Practice References.
Accounting for Public Utilities (Matthew Bender).

§ 77-5-769. Application of laws of other states and the United States.

Legislative consent is hereby given (a) to the application of the laws of other states with respect to taxation, payments in lieu of taxes, and the assessment thereof, to any municipality or joint agency created pursuant to this article which has acquired or has an interest in a project, real or personal, situated without the state, or which owns or operates a project without the state pursuant to this article, and (b) to the application of regulatory and other laws of other states and of the United States to any municipality or joint agency which owns or operates a project without the state.

HISTORY:
Laws, 1978, ch. 363, § 30, eff from and after passage (approved March 14, 1978).

§ 77-5-771. Grants-in-aid and loans from federal and state governments.

The governing authorities of any municipality or joint agency are hereby authorized to make application and to enter into contracts for and to accept grants-in-aid and loans from the federal and state governments and their agencies for planning, acquiring, constructing, expanding, maintaining and operating any project or facility, or participating in any research or development program, or performing any function which such municipality or joint agency may be authorized by general or local law to provide or perform.

In order to exercise the authority granted by this section, the governing authorities of any municipality or joint agency may:

(a) Enter into and carry out contracts with the state or federal government or any agency or institution thereof under which such government, agency or institution grants financial or other assistance to the municipality or joint agency;

(b) Accept such assistance or funds as may be granted or loaned by the state or federal government with or without such a contract;

(c) Agree to and comply with any reasonable conditions which are imposed upon such grants or loans;

(d) Make expenditures from any funds so granted.

HISTORY:
Laws, 1978, ch. 363, § 31, eff from and after passage (approved March 14, 1978).

§ 77-5-773. Eminent domain; crossing lines and rights-of-way of utilities.

Municipalities participating in a joint project and joint agencies shall possess the power of eminent domain for a project authorized by this article to the extent and in the same manner and under the same laws now available to municipalities under the laws of this state; provided, however, a municipality or joint agency exercising the power of eminent domain for a project authorized by this article shall have no power to condemn any facilities or property owned by a public utility or electric power association for the generation, transmission or distribution of electric power and energy.

The lines and rights-of-way of any public utility or of electric power associations or of municipalities participating in a joint project or of any joint agency may be crossed by any municipalities participating in a joint project or by any joint agency. The lines of any municipality participating in a joint project or of any joint agency may be crossed by any public utility or electric power association. Provided, however, the amount of damages, if any, resulting to the line or right-of-way from the crossing thereof as provided herein shall be determined by the affected parties and shall be paid by the public utility, electric power association, municipality or municipalities participating in a joint project, or joint agency to the owner of the lines or rights-of-way crossed. When the parties affected cannot agree upon the damages to be paid for the crossing, either party may file with the circuit court of the county in which the crossing occurs a petition seeking a determination of the amount of the damages. Said action shall be tried by jury at the next regular term of said court in the same manner and under the same principles as provided for the determination of damages in eminent domain proceedings.

HISTORY:

Laws, 1978, ch. 363, § 32, eff from and after passage (approved March 14, 1978).

Cross References —

Right of eminent domain, generally, see §§ 11-27-1 et seq.

Exercise of power of eminent domain by municipality which furnishes electric power, see § 77-5-441.

RESEARCH REFERENCES

Am. Jur.

9 Am. Jur. Pl & Pr Forms (Rev) Electricity, Gas, and Steam, Forms 11-18 (right of way and eminent domain).

Practice References.

Nichols on Eminent Domain (Matthew Bender).

§ 77-5-775. Personal liability of certain personnel.

No commissioner of any joint agency or officer of any municipality or person or persons acting in their behalf, while acting within the scope of their authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this article.

HISTORY:

Laws, 1978, ch. 363, § 33, eff from and after passage (approved March 14, 1978).

§ 77-5-777. Exemption from requirements of separate actions under this article when governing authorities of utility commission and municipality are same.

Whenever the governing authorities of the utility commission and of any municipality are one and the same, separate actions required by this article by the governing authorities of the municipality with respect to an action or determination required by this article by the governing authorities of the municipality with respect to an action or determination required by this article of a utility commission, including the ratification of resolutions of said utility commission, shall not be necessary, but the action required of a utility commission by this article shall be deemed to have occurred when done by the body forming the governing authorities and the utility commission.

HISTORY:
Laws, 1978, ch. 363, § 34, eff from and after passage (approved March 14, 1978).

§ 77-5-779. Provisions supplemental and additional.

The foregoing sections of this article shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized thereby and shall be deemed and construed to be supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article shall be controlling. Nothing in this article shall be construed to authorize the issuance of bonds for the purpose of financing the ownership of any facilities or any interest therein by any private corporation.

HISTORY:
Laws, 1978, ch. 363, § 35, eff from and after passage (approved March 14, 1978).

JUDICIAL DECISIONS

1. In general.
Joint municipal energy agency created under Joint Municipal Electric Power and Energy Law (§§ 77-5-701 et seq.) need not obtain certificate of public convenience and necessity from Mississippi Public Service Commission for purpose of construction of electric generating facilities. Mississippi Public Service Com. v. Municipal Energy Agency, 463 So. 2d 1056, 1985 Miss. LEXIS 1870 (Miss. 1985).

§ 77-5-781. Authority or right of other entities to engage in retail distribution of electric power not impaired.

Nothing contained in this article shall affect in any manner the authority or rights of any public utility, any electric power association, or any municipality to engage in the retail distribution of electric power within the service areas as certificated to them by the public service commission under the Public Utilities Act of 1956.

HISTORY:
Laws, 1978, ch. 363, § 36, eff from and after passage (approved March 14, 1978).

Cross References —
Mississippi Public Utilities Act of 1956, see §§ 77-3-1 et seq.

§ 77-5-783. Construction of article.

In order to effectuate the purposes and policies prescribed in this article, the provisions hereof shall be liberally construed.

HISTORY:
Laws, 1978, ch. 363, § 38, eff from and after passage (approved March 14, 1978).

ARTICLE 17.

MUNICIPAL AND COUNTY UTILITY SAFETY INCENTIVE PROGRAMS.

Sec.
77-5-801. Definitions.
77-5-803. Authorization of safety incentive program; form of incentive; eligibility for incentives; sources of funding for payment of incentives.

§ 77-5-801. Definitions.

For the purposes of this article, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Municipal utility" means any municipality of the State of Mississippi and any board, commission or other governing or supervisory body created by law, ordinance or resolution, that includes in its operations a system for the distribution of electric power from a federal agency, as defined in Section 77-5-403(h), that both owns the generation and transmission facilities for the sale of electric power; and shall include any county utility that includes in its operation an electric system operated under the Local Governmental Power Development Under Laws of 1934, as provided in Sections 77-5-301 through 77-5-315, and any municipal utility operating under the provisions of Chapter 27 of Title 21.

(b) "Safety incentive" means any award in the form of cash, property or other remuneration rendered on a contingent and prospective basis and available to all employees of a municipal utility whose governing body has adopted a safety incentive program that provides the incentive on a contingent and prospective basis subject to the municipal utility achieving certain safety goals prescribed by the governing body.

HISTORY:
Laws, 1995, ch. 460, § 1, eff from and after passage (approved March 27, 1995).

§ 77-5-803. Authorization of safety incentive program; form of incentive; eligibility for incentives; sources of funding for payment of incentives.

A municipal utility as defined in this article may adopt a safety incentive program and may pay safety incentives from the revenues of the municipal utility, but not from tax revenues, subject to the following conditions and limitations:

(a) The safety incentive shall be in the form of contingent compensation which shall be established prospectively before the commencement of the time period for which certain safety goals are to be in effect and in such levels and amounts as prescribed under eligibility standards established by the municipal utility. The safety incentives may be in the form of cash, property, merchandise certificates or other forms of award.

(b) No tax revenues of the municipality may be used for payment of the safety incentive, and all safety incentives shall be payable only from revenues received from the sale of utility services and matching funds obtained pursuant to paragraph (e) of this section.

(c) All employees of the municipal utility shall be eligible to receive safety incentives upon the municipal utility achieving its prescribed goals.

(d) The aggregate amount payable from the revenues of the municipal utility in the form of safety incentives shall not exceed the sum of One Hundred Dollars ($100.00) annually per employee; however, this limitation shall be increased in an amount equal to the percentage increase in the Consumer Price Index, as established by the United States Department of Labor, with the January, 1995, index to be used as the base month and year for calculating increases.

(e) Any safety incentive program adopted by a municipal utility shall be conditioned upon an amount not less than fifty percent (50%) of the aggregate value of safety incentive awards being derived from nonpublic sources such as, without limiting the scope of qualifying, nonpublic sources, private foundations, corporations, nonprofit organizations, insurance companies, associations, cooperatives, and other private sources; however, any matching funds received by grants or awards from any federal agency, as defined in Section 77-5-403(h), may be used for matching purposes. This paragraph (e) shall not apply to a municipal utility located in a city which has a state-supported institution of higher learning within its corporate limits and which is located on the Tennessee-Tombigbee River.

HISTORY:

Laws, 1995, ch. 460, § 2, eff from and after passage (approved March 27, 1995).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, at its August 5, 2008, meeting, ratified changing the reference to "paragraph (e) of this subsection" in (b) to read "paragragh (e) of this section."

CHAPTER 6.

MUNICIPAL GAS AUTHORITY OF MISSISSIPPI LAW

Sec.

77-6-1. Short title.
77-6-3. Legislative intent.
77-6-5. Definitions.
77-6-7. Municipal Gas Authority of Mississippi created; purpose; initial membership; principal office.
77-6-9. Membership in authority after its creation; withdrawal.
77-6-11. Board of commissioners.
77-6-13. Executive committee of board of commissioners.
77-6-15. Rights and powers of authority.
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77-6-19. Municipalities that may contract with authority.
77-6-21. Contracts to buy gas from authority.
77-6-23. Excess capacity or output may be sold or exchanged.
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77-6-27. Acquisition of property; contract requirements.
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77-6-37. Rents, rates, fees and charges by authority.
77-6-39. Pledge of municipality or authority valid and binding when made.
77-6-41. Investment of all monies received.
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77-6-59. Annual reports; audits.
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77-6-67. Where utility commission and municipality have same governing authorities.
77-6-69. Provisions supplemental to other laws.
77-6-71. Provisions not subject to Public Service Commission law.
77-6-73. Provisions to be liberally construed.
77-6-75. Members of legislature to have no interest in bonds.
77-6-77. Temporary borrowing through revenue anticipation notes for current and necessary expenses.

§ 77-6-1. Short title.

This chapter shall be known and may be cited as the “Municipal Gas Authority of Mississippi Law.”

HISTORY:

Laws, 1988, ch. 515, § 1, eff from and after passage (approved May 16, 1988).

§ 77-6-3. Legislative intent.

The Legislature hereby finds and declares that certain municipalities of this state now own and operate gas distribution systems to serve their citizens, inhabitants and customers by providing them with gas for all purposes; and if such municipalities are to furnish, and if the members of the public in the areas they serve are to receive adequate service, such municipalities must have adequate, dependable and economical sources of gas supplies. The Legislature declares that there exists in this state a need for an authority to function without profit in developing, obtaining and promoting for the public good in this state adequate, dependable and economical sources and supplies of gas for the purposes expressed in this section, and to assist in the financing of additions and other expenditures for the municipal gas systems of such municipalities.

HISTORY:

Laws, 1988, ch. 515, § 2, eff from and after passage (approved May 16, 1988).

§ 77-6-5. Definitions.

For purposes of this chapter, the following words shall have the meanings ascribed in this section unless the context otherwise requires:

(a) "Authority" means the Municipal Gas Authority of Mississippi and any successor thereto. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this chapter or impair the obligations of any contract existing under this chapter.

(b) "Bond anticipation notes" or "notes" means obligations issued after validation of bonds and in anticipation of the issuance of the bonds as validated.

(c) "Bonds" or "revenue bonds" means any bonds issued by the authority under this chapter, including refunding bonds.

(d) "Cost of project" or "cost of construction" means all costs of construction; all costs of real and personal property required for the purposes of such project and facilities related thereto including land and any leases, rights or undivided interest therein, easements, franchises, water rights, mineral rights, fees, permits, approvals, licenses and certificates, and the securing of such permits, approvals, licenses and certificates and the preparation of applications therefor and including all machinery and equipment, including equipment for use in connection with such construction; financing charges; working capital; interest prior to and during construction and during such additional period as the authority may determine; operating expenses during such period as the authority may determine; costs of engineering, geological, economic, architectural and legal services; costs of plans and specifications and all expenses necessary or incidental to determining the feasibility or practicability of the project; costs of insurance or of self-insuring any project; administrative expenses; amounts payable under any judgment against the authority; environmental mitigation costs; all costs associated with acquiring the contract rights or other contractual arrangements for the short-term or long-term provision of gas supplies including reserves, transmission, distribution, storage, peaking or other services associated therewith including prepayments for such; and such other expenses as may be necessary or incidental to the financing and is authorized by this chapter. All funds paid or advanced for any of the purposes mentioned in this paragraph by municipalities contracting with the authority prior to the issuance of any of the authority's bonds or notes may be refunded to such municipalities out of the proceeds of any bonds or notes so issued. The cost of any project may also include a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority for the operation of its projects and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds or bond anticipation notes may be authorized. Any obligation or expense incurred for any of the purposes mentioned in this paragraph shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds or notes issued under this chapter for such project.

(e) "Distribution" means the conveyance of gas to members of the authority and hence to the ultimate consumer.

(f) "Exploration" means the processes, properties, activities and facilities used for the discovery of deposits of gas, and the study and implementation of enhanced gas recovery methods.

(g) "Gas" means either natural or synthetic gas, including propane, manufactured gas, methane from coal beds, geothermal gas, and mixtures thereof, whether in gaseous or liquid form, or any byproduct resulting therefrom.

(h) "Governing authorities" means the legislative body, council, board of commissioners, board of aldermen, state agency, other body charged by law with governing the municipality or other entity eligible to be a member hereof.

(i) "Governing board" means the legislative body, council, board of trustees, board of commissioners or other body charged by law with governing the municipality or authority.

(j) "Local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(k) "Municipality" means a city, county or other political subdivision or agency of a state.

(*l*) "Production" means the physical activities, processes, properties and facilities for development, manufacture, synthesis, production, coal gasification, extraction, gathering of gas or conversion of one form of gas to another.

(m) "Project," "undertaking" or "facility" means any plant, works, system, facility, and real and personal property of any nature whatsoever together with all parts thereof and appurtenances thereto, and any contract rights relating to the storage, acquisition, distribution, transmission, purchase, sale, exchange or interchange of gas and relating to the acquisition, transportation, or storage of natural gas, or any interest in or right to the use, services, enrichment, output or capacity of any such plant, works, system or facilities. "Project" or "undertaking" as used in this paragraph is intended to include contracts and contract rights as well as tangible property. "Project," "undertaking" or "facility" shall not include any plant, works, system, facility or real or personal property of any nature whatsoever, or any parts thereof or appurtenances thereto, relating to exploration or production.

(n) "Revenue anticipation notes" means obligations issued by the authority for the purpose of meeting the current and necessary expenses of the authority as provided for in Section 77-6-77.

(o) "State" means the State of Mississippi.

(p) "Storage" means any process, properties, activities or facilities used to hold, store or maintain gas.

(q) "System" means those properties, facilities, projects, contractual rights or combination thereof of the authority which are designated by the authority as constituting a specific combination for the purposes of financing such, or for the purposes of providing gas supplies or services to a specified group of municipalities or to a specified geographic area.

(r) "Transmission" means the transfer of gas by the authority from its acquisition site to, between or among cities or municipal gas agencies or other persons with whom they may contract.

(s) "Utility commission" means the legislative body, board of commissioners or body charged by law with the control, management and operation of gas production, transmission or distribution systems.

HISTORY:
Laws, 1988, ch. 515, § 3; Laws, 2003, ch. 324, § 2, eff from and after passage (approved Mar. 7, 2003).

§ 77-6-7. Municipal Gas Authority of Mississippi created; purpose; initial membership; principal office.

There shall be created a local distribution company of the state to be known as the Municipal Gas Authority of Mississippi for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation and maintenance of a project or projects to supply gas for present or future needs as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project. In determining whether or not membership in the authority for such purpose is in the best interests of the municipalities, the utility commissions shall take into consideration, but shall not be limited to the following:

(a) Whether or not a separate entity may be able to finance the cost of projects in a more efficient and economical manner;

(b) Whether or not better financial market acceptance may result if one (1) entity is responsible for issuing all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating instead of multiple entities issuing separate issues of bonds;

(c) Whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership and operation of a project or projects; and

(d) Whether or not the existence of such a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be derived from such joint planning and undertaking.

If a utility commission shall determine that it is in the best interest of the municipality to become a member of the Municipal Gas Authority of Mississippi, it shall adopt a resolution so finding, which need not prescribe in detail the basis for the determination, and which shall set forth the names of the municipalities which are proposed to be initial members of the authority. Said resolution shall be certified to the governing authorities who shall thereupon disapprove or ratify the determination of said utility commission by resolution or ordinance spread upon its official minutes. The governing authorities shall cause notice of such determination to be given to the presiding officer of the utility commission of the municipality, which utility commission shall thereupon appoint in writing one (1) commissioner of the authority, which commissioner may, in the discretion of the utility commission, be an officer or employee of the municipality.

All such resolutions of intent to become initial members of the authority shall be presented, by the appointed commissioner of such utility commission, at its organizational meeting which shall be held in the old Supreme Court chamber of the New Capitol at 2:00 p.m. on May 16, 1988. The commissioners shall organize and elect a chairman and other such officers as may be desirable in the determination of the commissioners.

The authority shall have its principal office in Hinds County and its legal situs or residence for the purposes of this chapter shall be Hinds County.

HISTORY:

Laws, 1988, ch. 515, § 4, eff from and after passage (approved May 16, 1988).

Cross References —

Membership in the authority after its creation, see § 77-6-9.

§ 77-6-9. Membership in authority after its creation; withdrawal.

After the creation of the authority, any other municipality may become a member thereof upon application to such authority after the adoption of a resolution by the utility commission of the municipality setting forth the determination and finding prescribed in Section 77-6-7, and the adoption by the governing authorities of the municipality of a resolution or ordinance ratifying the determination of the utility commission and authorizing said municipality to participate, and with the majority consent of the members of the authority evidenced by the resolutions of their respective utility commissions. Any municipality may withdraw from the authority, provided that all contractual rights acquired and obligations incurred while a municipality was a member shall remain in full force and effect. The withdrawing municipality shall continue to honor its obligations entered into while a member of the authority.

HISTORY:

Laws, 1988, ch. 515, § 5, eff from and after passage (approved May 16, 1988).

OPINIONS OF THE ATTORNEY GENERAL

A municipality in Mississippi may contract with a public non-profit corporation to obtain natural gas; however, no authority is found for a municipality to become a member of a non-profit corporation of another state or to enter into an interlocal agreement with a nonprofit corporation of another state. Neither is authority found for municipalities of other states to become members of the Municipal Gas Authority of Mississippi. 2003 Miss. Op. Att'y Gen. 294.

§ 77-6-11. Board of commissioners.

The authority shall consist of a board of commissioners appointed by the respective utility commissions of the municipalities which are members of the authority. Each municipality shall appoint one (1) commissioner who may, at the discretion of the municipality, be an officer or employee of the municipality, the appointment to be made by resolution. Each commissioner shall have one (1) vote. Each commissioner shall serve at the pleasure of the utility commission by which he was appointed. Each appointed commissioner before entering upon his duties shall enter into bond with a corporate surety in an amount not less than Ten Thousand Dollars ($10,000.00), conditioned on the faithful performance of his duties, and shall take and subscribe to an oath, before some person authorized by law to administer oaths, to execute the duties of his office faithfully and impartially, and such bond and oath shall be filed with the governing authority of the appointing municipality and spread upon its minutes. The premiums on such bonds shall be paid by the municipality.

The board of commissioners of the authority shall annually elect one (1) of the commissioners as chairman, another as vice-chairman, and another person or persons who may but need not be commissioners to serve as treasurer, secretary and, if desired, assistant secretary. The treasurer shall enter into bond with a corporate surety in such amount of not less than Twenty-five Thousand Dollars ($25,000.00), as may be determined by the commissioners. The office of treasurer may be held by the secretary or assistant secretary. The board of commissioners may also appoint such additional officers as it deems necessary. The secretary or assistant secretary of the authority shall keep a record of the proceedings of the authority, and the secretary shall be the custodian of all records, books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

A majority of the commissioners of the authority then in office shall constitute a quorum. A vacancy in the board of commissioners of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this chapter may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted. A majority of the votes which the commissioners present are entitled to cast shall be necessary and sufficient to take any action or to pass any resolution, provided that such commissioners present are entitled to cast a majority of the votes of all commissioners of the board. Any commissioner may participate and vote in regular or special meetings of the board, as well as meetings of various committees of the board, via telecommunications or electronic means, and such participation and voting shall have the same effect as if the commissioner were physically present at such meetings. Any meeting of the board of commissioners or of a committee of the board at which one or more of the commissioners is participating via telecommunications or electronic means shall be subject to the Open Meetings Law (Chapter 41, Title 25, Mississippi Code of 1972), and all discussions during the meeting via telecommunications or electronic means, other than discussions held in executive session, must be open to the public. Notice of any meeting at which one or more commissioners may be participating via telecommunications or electronic means shall specify the location at which the meeting will be open to the public.

No commissioner of the authority shall receive any compensation for the performance of his duties hereunder; however, each commissioner, other than a commissioner participating in a meeting via telecommunications or electronic means, may be paid a per diem as provided by Section 25-3-69 while engaged in the performance of such duties.

HISTORY:
Laws, 1988, ch. 515, § 6; Laws, 2001, ch. 514, § 1, eff from and after passage (approved Mar. 29, 2001).

§ 77-6-13. Executive committee of board of commissioners.

The board of commissioners of the authority may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member municipalities. The executive committee shall have and exercise such of the powers and authority of the board of commissioners during intervals between the board's meetings as may be prescribed by its rules, motions or resolutions. The terms of office of the members of the executive committee and the method of filling vacancies therein shall be fixed by the rules of the board of commissioners of the authority.

HISTORY:
Laws, 1988, ch. 515, § 7, eff from and after passage (approved May 16, 1988).

§ 77-6-15. Rights and powers of authority.

The authority shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the rights and powers:

(a) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(b) To adopt an official seal and alter the same at pleasure;

(c) To sue and be sued in its own name, and to plead and be impleaded;

(d) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(e) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including rights-of-way or other interests in land less than the fee thereof;

(f) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(g) To pledge or assign any money, rents, charges or other revenues and any proceeds derived by the authority from the sales of property, insurance or condemnation awards;

(h) To issue bonds of the authority for the purpose of providing funds for any of its corporate purposes;

(i) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate and maintain, one or more projects, either individually or jointly, with one or more municipalities in this state or any other state or with any agencies or instrumentalities of any state, or any person, firm, association or corporation, public or private, engaged in the production, transmission, distribution or end-use of gas within this state or any other state, and to pay all or any part of the costs thereof from the proceeds of bonds of the authority or from any other funds made available to the authority;

(j) To authorize the construction, operation or maintenance of any project or projects by any person, firm or corporation, including municipalities and agencies of any state, or of the United States;

(k) To acquire by lease, purchase or otherwise an existing project or a project under construction, or any interest therein, or portion thereof;

(*l*) With the consent of sixty percent (60%) of the member municipalities, to sell or otherwise dispose of any project or projects, or any interest therein or portion thereof. The member municipalities may enter into an agreement with the authority whereby certain types of property may be traded or otherwise disposed of without unanimous consent of the member municipalities;

(m) To fix, charge and collect rents, rates, fees and charges for gas and other services, facilities and commodities sold, furnished or supplied through any project;

(n) To transmit, distribute, exchange or purchase gas, and to enter into contracts for any or all such purposes;

(o) To negotiate and enter into contracts for the purchase, sale, exchange, interchange, transportation, pooling, transmission, distribution, storage and processing of natural gas or use of gas with any municipality in this state or any other state owning gas distribution facilities, or with any municipalities, agencies or instrumentalities of any other state or with any gas association, any public or private utility, and any state, federal or municipal agency which owns gas production, transmission or distribution facilities end-use in this state or any other state;

(p) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this chapter, including contracts with persons, firms, corporations and others;

(q) To apply to the appropriate agencies of the state, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary to provide services, and to construct, maintain and operate projects in accordance with, and to obtain, hold and use, such licenses, permits, certificates or approvals in the same manner as any other person or operating unit of any other person;

(r) To employ engineers, architects, geologists, economists, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor;

(s) To purchase all kinds of insurance including, but not limited to, insurance against business interruption, and/or risks of damage to property;

(t) To purchase gas and related services from any source on behalf of its members and other customers and to sell the same to its members and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the board of commissioners shall determine;

(u) To do any and all things necessary and proper to reduce the cost of gas furnished to municipalities contracting with the authority including, without limitation, entering into interest rate swaps and other arrangements for restructuring the authority's capitalization;

(v) To provide management, technical, financial, informational, promotional and educational services to and for the benefit of the municipalities;

(w) To do any and all things necessary, convenient or proper for the accomplishment of the objectives of this chapter and to exercise the powers granted to the authority herein.

HISTORY:

Laws, 1988, ch. 515, § 8; Laws, 2002, ch. 381, § 1, eff from and after passage (approved Mar. 18, 2002).

RESEARCH REFERENCES

Am. Jur.

7B Am. Jur. Legal Forms 2d, Electricity, Gas, and Steam §§ 95:20 et seq. (particular agreements).

7B Am. Jur. Legal Forms 2d, Electricity, Gas, and Steam §§ 95:40 et seq. (optional provisions).

§ 77-6-17. Projects requiring financing by bonds; approval required; determination by authority; notice of determination; hearing; appeal from determination.

The authority shall not undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of sixty percent (60%) of its members. Before undertaking such project, required to be financed in whole or in part with the proceeds of bonds, the authority shall, based upon engineering studies and reports, determine that such project is required to provide for the projected needs for gas of its members from and after the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. In determining the future gas requirements of the members of the authority, there shall be taken into account the following:

(a) The economies and efficiencies estimated to be achieved in acquiring, constructing and operating the proposed facilities for the transmission of gas.

(b) The estimated requirements for gas and for reserve capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for gas to which the authority is or may become a party; and

(c) The cost of such existing alternative gas supply sources.

A determination by the authority based upon appropriate findings of the foregoing matters shall be conclusive as to the appropriateness of a project to provide the needs of the members of the authority for gas unless an interested party aggrieved by the determination of said authority shall file an appeal therefrom as herein provided. Notice of the determination by the authority shall be published one (1) time in one or more newspapers having general circulation in each of the municipalities constituting the membership of the authority and shall specify a date, not less than ten (10) days after the publication of such notice, at which the authority shall meet to hear any objections or remonstrances that may be made. At said meeting, the commissioners of the authority shall consider the objections or protests, if any, and shall at said meeting, or at any adjourned meeting, affirm, modify or rescind the determination. Any person or party objecting or protesting the determination at said meeting who is aggrieved by the action of said authority may appeal within ten (10) days from the date of adjournment at which session the authority rendered said determination, and may embody the facts and determination in a bill of exceptions which shall be signed by the person acting as chairman of the board of commissioners of the authority. The secretary thereof shall transmit at once the bill of exceptions to the circuit court of the county in which the principal office of the authority is located, and the court shall either in termtime or in vacation hear and determine the same on the case as presented by the bill of exceptions as an appellate court, and shall affirm or reverse the determination of the authority. If the determination of the authority be reversed, the circuit court shall certify the same to the board of commissioners of the authority. Costs shall be awarded as in other cases. The authority may employ counsel to defend such appeals to be paid out of the funds of the authority. Any such appeal may be heard and determined in vacation in the discretion of the court on motion of either party on written notice of ten (10) days to the other party or parties or the attorney of record, and the hearing of the same shall be held in the county where the suit is pending unless the judge in his order shall otherwise direct. Provided, however, no appeal to the circuit court shall be taken from any order or determination of the authority which authorizes the issuance or sale of bonds, but all objections to any matters relating to the issuance or sale of bonds shall be adjudicated and determined by the chancery court, in accordance with the provisions of Sections 31-13-5 through 31-13-11, Mississippi Code of 1972.

Nothing herein contained shall prevent the authority from undertaking studies to determine whether there is a need for a project or whether such project is feasible.

HISTORY:
Laws, 1988, ch. 515, § 9, eff from and after passage (approved May 16, 1988).

§ 77-6-19. Municipalities that may contract with authority.

The municipalities with which the authority shall be authorized to contract to provide a gas supply pursuant to this chapter shall be those municipalities of this state or any other state who may distribute or be end-users thereof.

HISTORY:
Laws, 1988, ch. 515, § 10, eff from and after passage (approved May 16, 1988).

§ 77-6-21. Contracts to buy gas from authority.

Any municipality which is a member of the authority may contract to buy from the authority gas required for its present or future requirements, including the capacity and output of one or more specified projects. As the creation of the authority is an alternative method, among other things, whereby a municipality may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the municipality so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable, operating, retired or decommissioned and notwithstanding the suspension, interruption, interference, reduction, curtailment or termination of the output of a project or the gas contracted for, and that such payments under the contract shall not be subject to any reduction whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the authority or any other member of the authority under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between the authority and its member municipalities may also provide that if one or more of such municipalities shall withdraw from the authority or default in the payment of its or their obligations, with respect to the purchase of said capacity or output, then in that event the remaining member municipalities which are purchasing capacity and output under the contract shall be required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality.

Notwithstanding the provisions of any other law to the contrary, any such contracts with respect to the sale or purchase of capacity, output or gas from a project may extend for a period not exceeding fifty (50) years from the date a project is estimated to be placed in normal continuous operation; and the execution and effectiveness thereof shall not be subject to any authorizations or approvals by the state or any agency, commission or instrumentality or municipality thereof except as in this chapter specifically required and provided.

Payments by a municipality under any contract for the purchase of capacity and output from the authority shall be made solely from the revenues derived from the ownership and operation of the gas system of said municipality, or other revenues when applicable, and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the municipality or upon any of its income, receipts or revenues, except the revenues of its gas system, and neither the full faith and credit nor the taxing power of the municipality are, or may be, pledged for the payment of any obligation under any such contract. A municipality, when applicable, shall be obligated to fix, charge and collect rents, rates, fees and charges for gas and other services, facilities and commodities, sold, furnished or supplied through its gas system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on bonds heretofore or hereafter issued by the municipality for purposes related to its gas system.

Any municipality which is a member of the authority may furnish the authority with money derived solely from the ownership and operation of its gas system or facilities and may make available for the use of the authority any personnel, equipment and property, both real and personal, which is a part of its gas system or facilities, and any other agency or end-user shall pay from any and all revenues available.

Any member of the authority may contract for, advance or contribute funds derived solely from the ownership and operation of its gas system or facilities to the authority as may be agreed upon by the authority and the member, and the authority shall repay such advances or contributions from proceeds of bonds, from operating revenues or from any other funds of the authority, together with interest thereon as may be agreed upon by the member and the authority.

HISTORY:
Laws, 1988, ch. 515, § 11, eff from and after passage (approved May 16, 1988).

Cross References —
Exemptions from sales tax, see §§ 27-65-105, 27-65-107.

§ 77-6-23. Excess capacity or output may be sold or exchanged.

The authority may sell or exchange the excess capacity or output of a project not then required by any of its members or with any party with whom the authority may contract for such consideration and for such period and upon such other terms and conditions as may be determined by the parties to any municipality or with any party with whom the authority may contract in this state or any other state owning gas distribution facilities, to any municipalities, agencies or instrumentalities of any other state, to any gas association, to any end-user, to any public or private utility, or to any other state, federal or municipal agency which owns gas production, transmission or distribution facilities either within or without this state. Provided, however, that sales of excess capacity or output of a project to gas associations, public or private utilities, and other persons the interest on whose securities and other obligations are not exempt from taxation by the federal government shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government.

HISTORY:
Laws, 1988, ch. 515, § 12, eff from and after passage (approved May 16, 1988).

Cross References —
Exemptions from sales tax, see §§ 27-65-105, 27-65-107.

§ 77-6-25. Provisions to be construed as authorizing joint and several ownership of projects.

The definitions and all other terms and provisions of this chapter shall be construed so as to include and authorize the joint or several ownership, operation, and/or maintenance by one or more municipalities or the authority of a project, or any undivided ownership interest therein, with any person, firm, association or corporation, public or private, engaged in the production, transmission or distribution of gas either within or without this state.

HISTORY:
Laws, 1988, ch. 515, § 13, eff from and after passage (approved May 16, 1988).

§ 77-6-27. Acquisition of property; contract requirements.

A municipality's or the authority's purchase of, contract for the acquisition of, or contract for any property, including any project or interest therein, or the construction of, or the operation and maintenance of, any project, owned or to be owned jointly by such municipality or the authority with any person, firm or corporation engaged in the production, transmission or distribution of gas, either within or without this state, other than with a municipality of this state or the authority created pursuant to this chapter, may be made or entered into without meeting the requirements of any law relating to acquisitions, purchases or contracts by competitive bids where the interest to be acquired by such municipality or the authority in such property or project is twenty-five percent (25%) or less.

If a municipality or the authority which finds and records on its minutes that acquisition of any project or any interest therein or any portion thereof, or any property or any interest therein or any portion thereof, which is authorized by this chapter is available or can be acquired or contracted for from or with a municipality or the authority or only a single source, person, firm or corporation, then such acquisition or contract may be made or entered into without meeting the requirements of any law relating to acquisitions, purchases or contracts by competitive bids. If, after advertising for competitive bids as to other proposed purchases, acquisitions or contracts, only one (1) bid is received, the municipality or the authority, as the case may be, may reject the bid and negotiate privately any purchase, contract or acquisition for a consideration not exceeding that proposed in the bid.

HISTORY:
Laws, 1988, ch. 515, § 14, eff from and after passage (approved May 16, 1988).

§ 77-6-29. Power to issue revenue bonds.

The authority may issue revenue bonds pledging to the payment thereof as to both principal and interest the revenues or any portion thereof, derived or to be derived from all or any of its projects, and any additions and betterments thereto or extensions thereof, or contributions or advances from its members. Bonds of the authority shall be authorized by a resolution adopted by its governing board and spread upon its minutes.

HISTORY:
Laws, 1988, ch. 515, § 15, eff from and after passage (approved May 16, 1988).

§ 77-6-31. Revenue bonds; powers and duties.

(1) Each municipality and the authority are hereby authorized to issue at one (1) time or from time to time revenue bonds for the purpose of paying all or any part of the cost of any of the purposes authorized by this chapter. The principal of, premium, if any, and the interest on such bonds shall be payable solely from the respective funds herein provided for such payment. The bonds

of each issue shall bear interest at such rate or rates as may be determined by the issuer, provided that the bonds of any issue shall not bear a greater overall interest rate to maturity than that allowed in Section 75-17-103, Mississippi Code of 1972. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, either as serial bonds or term bonds or a combination of serial and term bonds, not exceeding fifty (50) years from their respective date or dates, as may be determined by the governing board of the issuer, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the governing board of the issuer prior to the issuance of the bonds. The governing board of the issuer shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The governing board of the issuer may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing board of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. No bond shall bear more than one (1) rate of interest. All bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

All bonds issued pursuant to this chapter shall be advertised and sold on sealed bids in the manner provided under the provisions of Section 31-19-25; provided that on bond sales in excess of Five Million Dollars ($5,000,000.00) the authority may sell its bonds by negotiated sale at not less than ninety-eight percent (98%) of par, plus accrued interest, when the authority has employed a qualified financial advisor for the proposed bond issue. The duties of the financial advisor shall include the responsibility of preparing a statement to be submitted to the Governor, the Chairman of the House Ways and Means Committee and the Chairman of the Senate Finance Committee which shall clearly set forth the reasons why the negotiated sale was considered to be in the best interest of the authority and member municipalities, including the estimated savings in cost by selling the bonds at a negotiated sale.

(2) The proceeds of the bonds of each issue shall be used solely for the purposes for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the governing board of the issuer may provide in the resolution authorizing the issuance of such bonds.

The municipality or the authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The municipality or the authority may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed or lost.

(3) Bonds may be issued under the provisions of this chapter without obtaining the consent of the state or of any municipality, or of any agency, commission or instrumentality of either thereof, and without any other approvals, proceedings or the happening of any conditions or things other than those approvals, proceedings, conditions or things which are specifically required by this chapter and the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same; provided, however, the authority shall not issue any bonds pursuant to this chapter without the approval of sixty percent (60%) of its members.

(4) All bonds issued pursuant to this chapter shall be fully negotiable in accordance with their terms and shall be "securities" within the meaning of Article 8 of the Uniform Commercial Code, subject only to provisions of the bonds pertaining to registration.

(5) The state hereby covenants with the holders of any bonds issued pursuant to this chapter that so long as such bonds are outstanding and unpaid the state will not terminate the existence of nor limit or alter the rights and powers of a municipality or the authority under this chapter to conduct the activities referred to herein in any way pertinent to the interests of the bondholders, including, without limitation, the right to charge and collect rates, fees and charges and to fulfill the terms of any covenants made with bondholders, or in any way impair the rights and remedies of the bondholders, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or other security instrument securing the bonds.

HISTORY:

Laws, 1988, ch. 515, § 16; Laws, 2002, ch. 381, § 2, eff from and after passage (approved Mar. 18, 2002).

Cross References —

Article 8 of the Uniform Commercial Code, see §§ 75-8-101 et seq.

§ 77-6-33. Security for bonds.

In the discretion of the governing board of the issuer, any bonds issued under the provisions of this chapter may be secured by a resolution, a trust indenture or other security instrument, and in this regard the issuer may enter into an agreement with any trust company or bank having the powers of a trust company within or without the state to act as trustee for such bonds. Such resolution, trust indenture or other security instrument providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders.

The resolution, trust indenture or other security instrument providing for the issuance of such bonds may, in the discretion of the governing board of the issuer, contain covenants including, but not limited to, the following:

(a) The pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds or from the gas system or facilities of a municipality or the authority.

(b) The rents, rates, fees and charges to be established, maintained and collected, and the use and disposal of revenues, gifts, grants and funds received or to be received by the municipality or the authority.

(c) The setting aside of reserves and the investment, regulation and disposition thereof.

(d) The custody, collection, securing, investment and payment of all moneys held for the payment of bonds.

(e) Limitations or restrictions on the purposes to which the proceeds of sale of bonds then or thereafter to be issued may be applied.

(f) Limitations or restrictions on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, or the refunding of outstanding or other bonds.

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent thereto and the manner in which such consent may be given.

(h) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this chapter shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(i) The preparation and maintenance of a budget.

(j) The retention or employment of consulting engineers, independent auditors and other technical consultants.

(k) Limitations on or the prohibition of free service to any person, firm or corporation, public or private.

(*l*) The acquisition and disposal of property, provided that no project or part thereof shall be mortgaged by such resolution, trust indenture or other security instrument.

(m) Provisions for insurance and for accounting reports and the inspection and audit thereof.

(n) The continuing operation and maintenance of the project.

HISTORY:

Laws, 1988, ch. 515, § 17, eff from and after passage (approved May 16, 1988).

§ 77-6-35. Rents, rates, fees and charges by municipality.

A municipality is hereby authorized to fix, charge and collect rents, rates, fees and charges for gas and other services, facilities and commodities sold, furnished or supplied through the facilities of its gas system or its interest in any joint project. For so long as any bonds of a municipality are outstanding and unpaid, the rents, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its gas system, and its interest in any joint project, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution authorizing and securing bonds, to pay when due the principal of, premium, if any, and interest on all bonds heretofore or hereafter issued to finance additions, improvements and betterments to its gas system, and to pay any and all amounts which the municipality may be obligated to pay from said revenues by law or contract. Nothing herein contained shall be construed to prohibit any municipality from expending any revenues in excess of that required herein in any manner otherwise permitted by law.

HISTORY:

Laws, 1988, ch. 515, § 18, eff from and after passage (approved May 16, 1988).

RESEARCH REFERENCES

Practice References.

Accounting for Public Utilities (Matthew Bender).

§ 77-6-37. Rents, rates, fees and charges by authority.

The authority is hereby authorized to fix, charge and collect rents, rates, fees and charges for gas and other services, facilities and commodities sold, furnished or supplied through the facilities of its projects. For so long as any bonds of the authority are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution authorizing and securing bonds, and to pay any and all amounts which the authority may be obligated to pay from said revenues by law or contract.

HISTORY:

Laws, 1988, ch. 515, § 19, eff from and after passage (approved May 16, 1988).

RESEARCH REFERENCES

Practice References.

Accounting for Public Utilities (Matthew Bender).

§ 77-6-39. Pledge of municipality or authority valid and binding when made.

Any pledge made by a municipality or the authority pursuant to this chapter shall be valid and binding from the date the pledge is made. The revenues, securities and other moneys so pledged and then held or thereafter received by the municipality or the authority or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the municipality or the authority without regard to whether such parties have notice thereof. The resolution, trust indenture or other security instrument by which a pledge is created need not be filed or recorded in any manner.

HISTORY:

Laws, 1988, ch. 515, § 20, eff from and after passage (approved May 16, 1988).

§ 77-6-41. Investment of all monies received.

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or as revenues may be temporarily invested and reinvested pending the disbursements thereof in such securities and other investments as may be permitted by law for investment of excess funds of municipalities.

HISTORY:

Laws, 1988, ch. 515, § 21, eff from and after passage (approved May 16, 1988).

§ 77-6-43. Rights of holders of bonds.

Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder, or, to the extent permitted by law, under such resolution authorizing the issuance of such bonds or under any agreement or other contract executed by the municipality or the authority pursuant to this chapter, and may enforce and compel the performance of all duties required by this chapter or by such resolution to be performed by the authority or municipality or by any officer thereof, including the fixing, charging and collecting of rents, rates, fees and charges.

HISTORY:

Laws, 1988, ch. 515, § 22, eff from and after passage (approved May 16, 1988).

§ 77-6-45. Bonds to be securities.

Bonds issued by a municipality or the authority under the provisions of Sections 77-6-29 through 77-6-57 are hereby made securities in which all public officers and agencies of the state and all political subdivisions, all insurance companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the state or any political subdivision for any purpose for which the deposit of bonds or obligations of the state or any political subdivision is now or may hereafter be authorized by law.

HISTORY:
Laws, 1988, ch. 515, § 23, eff from and after passage (approved May 16, 1988).

§ 77-6-47. Obligations of issuing municipality or authority.

The bonds shall be special obligations of the municipality or the authority issuing them. The principal of, premium, if any, and interest on the bonds shall not be payable from the general funds of the municipality or the authority, nor shall they constitute a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues, except the funds which are pledged under the resolution authorizing the bonds. Neither the full faith and credit nor the taxing power of a municipality or of the state are, or may be, pledged for the payment of the principal of or interest on the bonds, and no holder of the bonds shall have the right to compel the exercise of the taxing power by the state or a municipality or the forfeiture of any of its property in connection with any default thereon. Every bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the municipality or the authority is not obligated to pay the principal or interest except from such revenues.

HISTORY:
Laws, 1988, ch. 515, § 24, eff from and after passage (approved May 16, 1988).

§ 77-6-49. Issuance of negotiable notes.

(1) The authority shall have the power and is authorized, whenever revenue bonds of the authority have been validated as provided in Title 31, Mississippi Code of 1972, to issue from time to time its negotiable notes in anticipation of the issuance of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, regardless of whether the notes to be renewed have matured. The authority may issue notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. The notes may be authorized, sold, executed and delivered in the same manner as bonds.

(2) Any resolution authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution authorizing bonds of the authority or any issue thereof; and the authority may include in any notes any terms, covenants or conditions which it is authorized to include in any bonds.

(3) All notes shall be general obligations of the authority, payable out of any of its funds or revenues, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding, provided that there may be specially pledged to the payment of such notes the proceeds to be derived from the issuance of the validated bonds in anticipation of the issuance of which the notes have been issued.

(4) Validation of such bonds shall be a condition precedent to the issuance of such notes, but it shall not be required that such notes be judicially validated.

(5) Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

HISTORY:
Laws, 1988, ch. 515, § 25, eff from and after passage (approved May 16, 1988).

§ 77-6-51. Evidence of indebtedness to be considered negotiable instruments.

Notwithstanding any other law to the contrary, every evidence of indebtedness issued under this chapter shall have all the rights and incidences of negotiable instruments, subject to provisions for registration.

HISTORY:
Laws, 1988, ch. 515, § 26, eff from and after passage (approved May 16, 1988).

§ 77-6-53. Refunding bonds.

A municipality or the authority is hereby authorized to provide by resolution for the issuance of refunding bonds of the municipality or the authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the municipality or the authority in respect to the same shall be governed by the provisions of this chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor.

HISTORY:
Laws, 1988, ch. 515, § 27, eff from and after passage (approved May 16, 1988).

§ 77-6-55. Exemption from taxation.

Bonds, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation by the state or any political subdivision or any agency of either thereof, excepting inheritance, estate or gift taxes.

HISTORY:
Laws, 1988, ch. 515, § 28, eff from and after passage (approved May 16, 1988).

§ 77-6-57. Dissolution of board of commissioners.

Whenever the board of commissioners of the authority and the utility commissions of its member municipalities shall by resolution or ordinance determine that the purposes for which the authority was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the authority have been fully paid or satisfied, such board of commissioners and utility commissions may declare the authority to be dissolved. On the effective date of such resolution or ordinance, the title to all funds and other property owned by the authority at the time of such dissolution shall vest in the member municipalities of the authority as provided in this chapter and the bylaws of the authority.

HISTORY:
Laws, 1988, ch. 515, § 29, eff from and after passage (approved May 16, 1988).

§ 77-6-59. Annual reports; audits.

The authority shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to the governing authorities and to the utility commissions of its member municipalities. Each such report shall set forth a complete operating and financial statement covering the operations of the authority during such year. The authority shall cause an audit of its books of record and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction of a project or projects, or otherwise as part of the expense of administration of a project covered by such audit.

The municipalities possessing ownership interests in a project shall, following the closing of each fiscal year, submit a consolidated or combined annual report of their activities with respect to such project for the preceding year to the respective governing authorities of such municipalities. Each such report shall set forth a complete operating and financial statement covering the operations of the jointly owned project during such year. The municipalities possessing ownership interests in a project shall cause an audit of the books of record and accounts relating to such project to be made at least once in each year by certified public accountants and the cost thereof may be treated as a cost of construction of the project, or otherwise as part of the expenses of the administration of the project covered by such audit.

HISTORY:
Laws, 1988, ch. 515, § 30, eff from and after passage (approved May 16, 1988).

RESEARCH REFERENCES

Practice References.
Accounting for Public Utilities (Matthew Bender).

§ 77-6-61. Application of laws of other states.

Legislative consent is hereby given (a) to the application of the laws of other states with respect to taxation, payments in lieu of taxes, and the assessment thereof, to any municipality or the authority which has acquired or has an interest in a project, real or personal, situated without the state, or which owns or operates a project without the state pursuant to this chapter, and (b) to the application of regulatory and other laws of other states and of the United States to any municipality or authority which owns or operates a project without the state.

HISTORY:
Laws, 1988, ch. 515, § 31, eff from and after passage (approved May 16, 1988).

§ 77-6-63. Grants and loans authorized.

The governing authorities of any municipality or the authority are hereby authorized to make application and to enter into contracts for and to accept grants-in-aid and loans from the federal and state governments and their agencies for planning, acquiring, constructing, expanding, maintaining and operating any project or facility, or participating in any research or development program, or performing any function which such municipality or the authority may be authorized by general or local law to provide or perform.

In order to exercise the authority granted by this section, the governing authorities of any municipality or the authority may:

(a) Enter into and carry out contracts with the state or federal government or any agency or institution thereof under which such government, agency or institution grants financial or other assistance to the municipality or authority;

(b) Accept such assistance or funds as may be granted or loaned by the state or federal government with or without such a contract;

(c) Agree to and comply with any reasonable conditions which are imposed upon such grants or loans;

(d) Make expenditures from any funds so granted.

HISTORY:
Laws, 1988, ch. 515, § 32, eff from and after passage (approved May 16, 1988).

§ 77-6-65. Powers and duties in connection with eminent domain, sales to customers of public utilities, and utility lines and rights-of-way.

Municipalities participating in a project of the authority shall possess the power of eminent domain for a project authorized by this chapter to the extent and in the same manner and under the same laws now available to municipalities under the laws of this state; provided, however, a municipality or the authority exercising the power of eminent domain for a project authorized by this chapter shall have no power to condemn any facilities or property owned by a public utility or gas association for the production, transmission or distribution of gas.

There shall be no transmission, sale, distribution or delivery of natural, artificial or mixed gas by the authority to any end user being served by a public utility as defined by Section 77-3-3(d)(ii) holding a certificate of public convenience and necessity issued by the Mississippi Public Service Commission or to any end user located or to be located within the certificated area of such a public utility nor shall the powers of the authority be exercised for or on behalf of any such end user unless the public utility holding such a certificate of public convenience and necessity shall have filed with the Mississippi Public Service Commission a statement that it is either unwilling or unable to serve such user.

The lines and rights-of-way of any public utility or of gas associations or of municipalities participating in a project or of the authority may be crossed by any other municipalities participating in a project of the authority. The lines of any municipality participating in a project of the authority may be crossed by any public utility or gas association. Provided, however, the amount of damages, if any, resulting to the line or right-of-way from the crossing thereof as provided herein shall be determined by the affected parties and shall be paid by the public utility, gas association, municipality or municipalities participating in a project, or the authority, to the owner of the lines or rights-of-way crossed. When the parties affected cannot agree upon the damages to be paid for the crossing, either party may file with the circuit court of the county in which the crossing occurs a petition seeking a determination of the amount of the damages. Said action shall be tried by jury at the next regular term of said court in the same manner and under the same principles as provided for the determination of damages in eminent domain proceedings.

HISTORY:

Laws, 1988, ch. 515, § 33, eff from and after passage (approved May 16, 1988).

RESEARCH REFERENCES

Practice References.

Nichols on Eminent Domain (Matthew Bender).

§ 77-6-67. Where utility commission and municipality have same governing authorities.

Whenever the governing authorities of the utility commission and of any municipality are one and the same, separate actions required by this chapter by the governing authorities of the municipality with respect to an action or determination required by this chapter by the governing authorities of the municipality with respect to an action or determination required by this chapter of a utility commission, including the ratification of resolutions of said utility commission, shall not be necessary, but the action required of a utility commission by this chapter shall be deemed to have occurred when done by the body forming the governing authorities and the utility commission.

HISTORY:
Laws, 1988, ch. 515, § 34, eff from and after passage (approved May 16, 1988).

§ 77-6-69. Provisions supplemental to other laws.

The foregoing sections of this chapter shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized thereby and shall be deemed and construed to be supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that insofar as the provisions of this chapter are inconsistent with the provisions of any other general, special or local law, the provisions of this chapter shall be controlling. Nothing in this chapter shall be construed to authorize the issuance of bonds for the purpose of financing the ownership of any facilities or any interest therein by any private corporation.

HISTORY:
Laws, 1988, ch. 515, § 35, eff from and after passage (approved May 16, 1988).

§ 77-6-71. Provisions not subject to Public Service Commission law.

(1) The rates, services and practices relating to the purchase, development, storage, transmission, distribution and sale by the authority of gas as authorized by this chapter shall not be subject to the provisions of the Mississippi Public Service Commission law nor to its regulation.

(2) The provisions of this chapter do not, and are not intended to, increase or diminish the authority and jurisdiction of the Public Service Commission with respect to the distribution, sale, or transmission of gas by any county, municipal corporation or other political subdivision of this state.

HISTORY:
Laws, 1988, ch. 515, § 36, eff from and after passage (approved May 16, 1988).

Cross References —
Public Service Commission, see §§ 77-1-1 et seq.

§ 77-6-73. Provisions to be liberally construed.

In order to effectuate the purposes and policies prescribed in this chapter, the provisions hereof shall be liberally construed.

HISTORY:
Laws, 1988, ch. 515, § 39, eff from and after passage (approved May 16, 1988).

§ 77-6-75. Members of legislature to have no interest in bonds.

No member of the Legislature or elected official or any partner or associate of any member of the Legislature or elected official shall be interested or derive any income, either directly or indirectly, from the issuance of any bonds under this chapter during his or her term of office or within one (1) year after the expiration of such term of office.

HISTORY:
Laws, 1988, ch. 515, § 40, eff from and after passage (approved May 16, 1988).

§ 77-6-77. Temporary borrowing through revenue anticipation notes for current and necessary expenses.

(1) The authority is hereby authorized to make temporary borrowings through revenue anticipation notes for the purpose of meeting the current and necessary expenses of the authority (including the purchase of gas supplies) and paying the costs of issuing the revenue anticipation notes. The authority is authorized to make such temporary borrowings through revenue anticipation notes for a period not to exceed thirteen (13) months. To provide for such temporary borrowings, the authority may provide for the private sale of such revenue anticipation notes and may enter into any purchase, loan or credit agreements or other agreements with any banks, trust companies or other lending institutions, investment banking firms or persons in the United States having power to enter into the same. The authority shall provide for repayment of any revenue anticipation note issued hereunder within thirteen (13) months from the issuance date thereof from all or a portion of any available revenues of the system.

(2) All temporary borrowings made under this section shall be evidenced by revenue anticipation notes of the authority which shall be issued, from time to time, for such amounts, in such form and in such denominations and subject to terms and conditions of sale and issuance, prepayment or redemption and maturity, rate or rates of interest and time of payment of interest as the board of commissioners shall authorize and direct in accordance with this section. Such authorization and direction may provide for the subsequent issuance of replacement notes to refund, upon issuance thereof, such notes, and may specify such other terms and conditions with respect to the notes or any replacement notes authorized for issuance as the board of commissioners of the authority may determine and direct. Revenue anticipation notes issued by the authority under the provisions of this section shall not be subject to any other

requirements set forth in this chapter with respect to projects financed with bonds or the sale of issuance of bonds.

HISTORY:

Laws, 2003, ch. 324, § 1, eff from and after passage (approved Mar. 7, 2003).

Editor's Notes —

Laws of 2003, ch. 324, § 3, provides:

"SECTION 3. Section 1 of this act shall be codified within Chapter 67, Title 77, Mississippi Code of 1972." There is no Chapter 67 of Title 77. Section 1 has been codified in Chapter 6 of Title 77 at the direction of Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication.

CHAPTER 7.

MOTOR CARRIERS

General Provisions. 77-7-1
Certificates of Public Convenience and Necessity; Permits; Interstate Permits. 77-7-41
Performance Bond; Insurance. 77-7-81
Inspection Fees; Identification Plates; Identification Trip Permits. 77-7-111
General Duties of Common and Restricted Common Carriers. 77-7-151
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GENERAL PROVISIONS

Sec.
77-7-1. Short title.
77-7-3. Declaration of public policy; application of chapter.
77-7-5. Construction of chapter.
77-7-7. Definitions.
77-7-9. Qualifications upon definition of "common carrier by motor vehicle" and "contract carrier by motor vehicle.".
77-7-11. Obedience to chapter required.
77-7-13. Powers and duties of commission.
77-7-15. Promulgation of order, rules, regulations and requirements by commission.
77-7-16. Supervision and inspection of safe operation and use of certain motor vehicles.
77-7-17. Prohibited interests of commissioners and employees.
77-7-19. Repealed.
77-7-21. Engagement in intrastate operation by restricted motor carriers.
77-7-23. Promulgation of regulations governing restricted motor carriers.
77-7-25. Exemption of certain commercial motor vehicles from federal regulations; exceptions.

§ 77-7-1. Short title.

This chapter may be cited as the "Mississippi Motor Carrier Regulatory Law of 1938."

HISTORY:

Codes, 1942, § 7632; Laws, 1938, ch. 142.

Cross References —

Uniform Highway Traffic Regulation Law; Size, Weight and Load Regulations, see §§ 63-5-1 et seq.

Uniform Highway Traffic Regulation Law; Equipment and Identification Regulations, see §§ 63-7-1 et seq.

§ 77-7-3. Declaration of public policy; application of chapter.

It is hereby declared to be the policy of the legislature to regulate motor carriers in the public interest to the end that the safety and welfare of the public in its use of the highways and of the transportation agencies by motor vehicle used thereon may be practiced; that the property of the state in its highways may be protected from unreasonable, improper and excessive use; that the inherent advantages of highway transportation may be recognized and preserved; that sound economic conditions in such transportation and among such carriers may be fostered; that the service by motor carriers may be adequate, economical, and efficient; that reasonable charges may be made therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; that relations between motor carriers and other carriers may be improved and coordinated; and that cooperation may be maintained with the governments of the United States and the several states, and with their duly authorized officials in carrying out the purposes and provisions of this chapter. This chapter shall apply to persons and motor vehicles engaged in interstate commerce to the extent permitted by the Constitution and laws of the United States and as provided herein.

HISTORY:

Codes, 1942, § 7633; Laws, 1938, ch. 142.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Adequacy of service.

1. In general.

Commission's power is circumscribed by its statutorily granted power to protect public interest with respect to use of highways, and no where in statute did legislature authorize Public Service Commission to inquire into transactions between corporations and their fiduciaries to determine whether they were inherently fair to shareholders or creditors. It is not within purview of Public Service Commission to enforce creditors' liens and set aside transfer of certificate of necessity made to evade creditors, except as they affect public interest in regulating motor carriers. Dorman v. Rowell, 515 So. 2d 1214, 1987 Miss. LEXIS 2918 (Miss. 1987).

A rule of the public service commission limiting the right of common carriers of household goods to establish bases of operations and to domicile their equipment is within its power, notwithstanding such carriers hold certificates of public convenience and necessity to operate to and from all points in the state, where lack of regulation has resulted in unsound economic conditions and permitted unfair and destructive competitive practices. Mississippi Public Service Com. v. Holloway Transfer & Storage Co., 247 Miss. 184, 150 So. 2d 411, 1963 Miss. LEXIS 292 (Miss. 1963).

It was the intent and purpose of the legislature to exempt from the provisions of the Motor Carrier Regulatory Law purely local operations of motor vehicles within an area or zone adjacent to municipality or municipalities not to exceed five miles from the corporate limits. Seal v. Andrews, 214 Miss. 215, 58 So. 2d 504, 1952 Miss. LEXIS 460 (Miss. 1952).

The language of this section declares the policy of the state with respect to the granting of certificates of public necessity and convenience to motor carriers. Tri-State Transit Co. v. Dixie Greyhound Lines, Inc., 197 Miss. 37, 19 So. 2d 441, 1944 Miss. LEXIS 273 (Miss. 1944).

The term public convenience and necessity, used throughout the statute, is not to be confused with the idea of public convenience or necessity, since while it may be convenient to have a bus going in each direction every hour of the day from the various stations along a route, public necessity does not so require. Dixie Greyhound Lines, Inc. v. Mississippi Public Service Com., 190 Miss. 704, 1 So. 2d 489, 200 So. 579, 1941 Miss. LEXIS 60 (Miss. 1941).

State could not, on relation of district attorney, sue to restrain bus companies, having franchise from railroad commission to use highway, from continuing to use state highway, on ground they were wrongfully using highway to extent constituting public nuisance. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

2. Adequacy of service.

Where a carrier held a certificate giving it authority to serve certain points, the public service commission did not have authority to grant to an applicant certificate to serve the same points in interstate commerce despite the fact there was a determination that existing service was inadequate, without first giving the carrier reasonable time within which to render such additional service as might be required. West Bros., Inc. v. H & L Delivery Service, Inc., 220 Miss. 323, 70 So. 2d 870, 1954 Miss. LEXIS 444 (Miss. 1954).

Certificate of public convenience and necessity should not be granted to a motor carrier where there is existing adequate service over the route applied for, or, even if inadequate, unless the existing carrier has been given an opportunity to furnish such additional service as may be required. Tri-State Transit Co. v. Dixie Greyhound Lines, Inc., 197 Miss. 37, 19 So. 2d 441, 1944 Miss. LEXIS 273 (Miss. 1944); Southern Bus Lines, Inc. v. Mississippi Public Service Com., 210 Miss. 606, 50 So. 2d 149, 1951 Miss. LEXIS 298 (Miss. 1951); Dixie Greyhound Lines v. Am. Buslines, 209 Miss. 874, 48 So. 2d 584, 1950 Miss. LEXIS 453 (Miss. 1950).

Order of public service commission denying to a motor carrier an intrastate certificate of public necessity and convenience over the same route for which it already had an interstate certificate, where a competing carrier had both intrastate as well as interstate certificates, was supported by substantial evidence, although circuit court had reversed the order to the extent of granting the certificate until the expiration of six months after the end of the war. Tri-State Transit Co. v. Dixie Greyhound Lines, Inc., 197 Miss. 37, 19 So. 2d 441, 1944 Miss. LEXIS 273 (Miss. 1944).

Whether a railroad should have been given a preference and allowed to operate busses over highways paralleling their lines of railway, through subsidiary bus companies, before any certificates of public convenience and necessity were ever issued to other motorbus transportation companies over such routes, was a legislative question and not a judicial one. Tri-State Transit Co. v. Mobile & Ohio Transp. Co., 191 Miss. 364, 2 So. 2d 845, 1941 Miss. LEXIS 164 (Miss. 1941).

§ 77-7-5. Construction of chapter.

(1) Nothing in this chapter shall be construed to relieve any person from the payment of any licenses, fees, taxes or levies now or hereafter imposed by law.

(2) Nothing in this chapter shall apply to transportation network companies or transportation network company drivers as defined in Section 77-8-1 or any activity regulated in Chapter 8, Title 77.

(3) Neither this chapter nor any provision thereof shall apply or be construed to apply to commerce with foreign nations, or commerce among the several states of the union, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.

HISTORY:
Codes, 1942, § 7686; Laws, 1938, ch. 142; Laws, 2016, ch. 328, § 22, eff from and after July 1, 2016.

RESEARCH REFERENCES

Lawyers' Edition.
State tax or fee imposed for motor carrier's use of highways as violating commerce clause (Article 1, § 8, clause 3) of Federal Constitution–Supreme Court cases. 97 L. Ed. 2d 843.

§ 77-7-7. Definitions.

Whenever used in this chapter unless expressly stated otherwise:

(a) The term "person" means individual, firm, copartnership, corporation, company, association or joint-stock association, and includes any trustee, receiver, assignee or personal representative thereof.

(b) The term "commission" means the Mississippi Transportation Commission.

(c) The term "highway" means every public highway or place of whatever nature open to the use of the public for purposes of vehicle travel in this state, including the streets and alleys in towns and cities.

(d) The term "motor vehicle" and "vehicle" means any vehicle, machine, tractor, trailer or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property; such term, however, does not include any vehicle, locomotive or car operated exclusively on a rail or rails.

(e) The term "common carrier by motor vehicle" means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or household goods.

(f) The term "contract carrier by motor vehicle" means any person, not included under subsection (e) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or household goods.

(g) The term "restricted motor carrier" means all carriers of property, except household goods, by motor vehicle for compensation.

(h) The "services" and "transportation" to which this chapter applies include all vehicles operated by, for or in the interest of any motor carrier irrespective of ownership or contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or property or in the performance of any service in connection therewith.

(i) The term "certificate" means a certificate of public convenience and necessity issued by the commission to common carriers by motor vehicle and restricted common carriers by motor vehicle under this chapter.

(j) The term "permit" means a permit issued by the commission to contract carriers by motor vehicle under this chapter.

(k) The term "interstate permit" means a permit issued under the terms of this chapter to the holder of a certificate of public convenience and necessity, a permit, or other operating authority from the U.S. Department of Transportation.

(*l*) The term "owner" or "operator" and "owner and operator" means any individual, firm, copartnership, corporation, company, association or joint-stock association, and includes any trustee, receiver, assignee or personal representative thereof, to whom or to which a certificate of convenience and necessity or permit or interstate permit has been issued by the commission.

(m) The term "vanpooling" means a nonprofit arrangement entered into to provide for the transportation of persons to and from their places of employment utilizing a motor vehicle manufactured primarily for the transporting of not less than eight (8) nor more than fifteen (15) people, and where the costs of operating said vehicle, including reasonable vehicle depreciation costs, are paid for by those people utilizing such arrangement.

(n) The term "gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(o) The term "gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

HISTORY:

Codes, 1942, §§ 7634, 7677-05; Laws, 1938, ch. 142; Laws, 1948, ch. 327, § 14; Laws, 1980, ch. 343, § 1; Laws, 1995, ch. 338, § 1; Laws, 2007, ch. 304, § 1, eff from and after July 1, 2007; Laws, 2018, ch. 332, § 1, eff from and after passage (approved March 8, 2018).

Amendment Notes —

The 2018 amendment, effective March 8, 2018, substituted "Mississippi Transportation Commission" for "Public Service Commission of the State of Mississippi" in (b), substituted "U.S. Department of Transportation" for "Interstate Commerce Commission" in (k), and deleted "Public Service" preceding "commission" in (*l*).

JUDICIAL DECISIONS

1. In general.

Evidence, including a showing that carrier was free to accept or reject any offered shipments, never held itself out as a public utility, and each shipment hauled was based upon an individual agreement, established that carrier was a private or contract carrier and not a common carrier. Erwin Mills, Inc. v. Williams, 238 Miss. 335, 118 So. 2d 339, 1960 Miss. LEXIS 410 (Miss. 1960).

A bill of lading is not controlling in determining who is a common carrier within the meaning of the Mississippi Motor Carrier Law. Erwin Mills, Inc. v. Williams, 238 Miss. 335, 118 So. 2d 339, 1960 Miss. LEXIS 410 (Miss. 1960).

A motor carrier of cotton was not a common carrier where he conditioned his willingness to carry upon the negotiations of a satisfactory price, had no tariffs or any schedule of rates and charges, and in arriving at an agreeable rate or price, or in determining whether he would accept a shipment at a tendered rate, took into account such elements as the amount of cargo offered, previous relationships with the shipper, whether the shipper provided cargo insurance, the nature, duration and time of the trip, availability of equipment to meet his own needs or other transportation commitments and the like. Home Ins. Co. v. Riddell, 252 F.2d 1, 1958 U.S. App. LEXIS 5447 (5th Cir. Miss. 1958).

OPINIONS OF THE ATTORNEY GENERAL

Since there is no direct conflict between Section 601 of the Federal Aviation Administration Authorization Act of 1994 and this section, nor does the state criminal statute frustrate the purposes of the federal legislation, the Attorney General is unable to state that the federal legislation preempts the enforcement of the criminal provisions of Section 77-1-11. 1995 Miss. Op. Att'y Gen. 7.

RESEARCH REFERENCES

ALR.

Incidental provision of transportation services, by party not primarily in that business, as common carriage subject to state regulatory control. 87 A.L.R.4th 638.

Am. Jur.

13 Am. Jur. 2d, Carriers §§ 2 et seq.

CJS.

13 C.J.S., Carriers §§ 1-9 et seq., 546 et seq.

§ 77-7-9. Qualifications upon definition of "common carrier by motor vehicle" and "contract carrier by motor vehicle."

The term "common carrier by motor vehicle," as defined in subsection (e) of Section 77-7-7, and the term "contract carrier by motor vehicle," as defined in subsection (f) of Section 77-7-7, shall not include:

(a) Motor vehicles employed to transport school children and teachers; motor vehicles transporting people where not more than seven (7) passengers are carried; motor vehicles used for transporting workers to and from any factory, railroad shop, mill or agricultural enterprise located in this state; and motor vehicles used in vanpooling as the term is defined in subsection (m) of Section 77-7-7.

(b) Trolley buses operated by electric power derived from fixed overhead wire, furnishing local passenger transportation similar to street railway service.

(c) Motor vehicles engaged exclusively in hauling for the Mississippi Department of Transportation, or for any county, city or town in this state.

(d) Motor vehicles engaged in the transportation of passengers and household goods wholly within a municipality, except when the transportation is under a common control, management or arrangement for a continuous carriage or shipment to or from a point without the municipality, municipalities or zone.

(e) Motor vehicles operated by a bona fide regularly licensed merchant, manufacturer or dealer in this state transporting merchandise or other commodities owned by the merchant, manufacturer or dealer in his or her own motor vehicle.

(f) Buses. Motor vehicles owned or chartered by all schools and colleges, religious or charitable associations or institutions, or governmental agencies, when used to convey their athletic teams, orchestras, or other scholastic, religious or charitable organizations or employees on temporary trips through or in this state, and motor vehicles transporting students on guided tours through or in this state. This exemption shall not be construed to apply to motor vehicles or buses transporting persons that operate on a fixed schedule through this state for compensation or for hire.

Any person, who by lease or otherwise permits the use of a motor vehicle or vehicles by others, and who furnishes in connection therewith a driver or drivers, either directly or indirectly, or in any manner whatsoever exercises any control, or assumes any responsibility over the operation of the vehicle or vehicles, other than furnishing necessary maintenance during the period of the lease or other device, shall be deemed a "common carrier by motor vehicle," or "contract carrier by motor vehicle" or "restricted motor carrier."

HISTORY:

Codes, 1942, §§ 7635, 7679; Laws, 1938, ch. 142; Laws, 1948, ch. 270, § 1; Laws, 1958, ch. 505, § 1; Laws, 1960, ch. 406, § 3; Laws, 1980, ch. 343, § 2; Laws, 1993, ch 561, § 1; Laws, 1995, ch. 338, § 2, eff from and after passage (approved March 10, 1995).

Cross References —

Application of this section to the supervision and inspection of the safe operation and use of certain motor vehicles, see § 77-7-16.

JUDICIAL DECISIONS

1. In general.

It was the intent and purpose of the legislature to exempt from the provisions of the Motor Carrier Regulatory Law purely local operations of motor vehicles within an area or zone adjacent to municipality or municipalities not to exceed five miles from the corporate limits. Seal v. Andrews, 214 Miss. 215, 58 So. 2d 504, 1952 Miss. LEXIS 460 (Miss. 1952).

Under this section a corporation engaged in the business of compressing and warehousing cotton could transport cotton to its own warehouse without the necessity of a certificate of convenience and necessity, such operations in connection with the corporation's business being exempted hereunder. Mississippi-Gulfport Compress & Warehouses, Inc. v. Public Service Com., 189 Miss. 166, 196 So. 793, 1940 Miss. LEXIS 121 (Miss. 1940).

RESEARCH REFERENCES

ALR.
Incidental provision of transportation services, by party not primarily in that business, as common carriage subject to state regulatory control. 87 A.L.R.4th 638.

Am. Jur.
13 Am. Jur. 2d, Carriers §§ 2 et seq.

CJS.
13 C.J.S., Carriers §§ 1-9 et seq., 546 et seq.

§ 77-7-11. Obedience to chapter required.

No motor carrier shall operate any motor vehicle for the transportation of passengers or property for compensation on any highway in this state, except in accordance with the provisions of this chapter, and every such motor carrier is hereby declared to be subject to control, supervision and regulation by the commission. Nothing in this chapter shall confer any proprietary or property rights in the use of the public highways.

HISTORY:
Codes, 1942, § 7636; Laws, 1938, ch. 142.

§ 77-7-13. Powers and duties of commission.

(1) It shall be the duty of the commission and the commission shall have the power:

(a) To regulate common carriers by motor vehicle and contract carriers by motor vehicle not exempted in this chapter, doing business in this state, and to that end, the commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform system of accounts, records and reports, preservation of records, and safety of operation and equipment, including maximum hours of service of employees.

(b) For the purpose of carrying out the provisions of this chapter, to avail itself of the special information of the Mississippi Transportation Commission in promulgating safety requirements and in considering applications for certificates or permits with particular reference to conditions of the public highway or highways involved, and the ability of the said public highway or highways to carry added traffic; the Mississippi Transportation Commission upon request of the commission shall furnish such information.

(c) To administer, execute and enforce all other provisions of this chapter, to make necessary orders in connection therewith, and to prescribe rules, regulations and procedure for such administration.

(d) To inquire into the organization of motor carriers, and into the management of their businesses, to keep itself informed as to the manner and method in which the same is conducted, and to transmit to the Legislature, from time to time, such recommendations as to additional legislation relating to such carriers as the commission may deem necessary.

(2) The commission may from time to time establish such just and reasonable classifications of groups of carriers included in the terms "common carrier by motor vehicle" and "contract carrier by motor vehicle," as the special nature of the services performed by such carriers shall require, and the commission may from time to time establish such just and reasonable rules, regulations and requirements, consistent with the provisions of this chapter, to be observed by the carriers so classified or grouped, as the commission deems necessary or desirable in the public interest.

(3) The commission may from time to time enter into joint and cooperative agreements with other governmental agencies in regard to safety, forms, operating procedures and regulatory jurisdiction.

(4) The rules, regulations, requirements and classifications adopted in pursuance to the power and duty of the commission by this section granted and imposed shall conform as nearly as practicable to the rules, regulations, requirements and classifications promulgated by the Interstate Commerce Commission, the United States Department of Transportation, or any other appropriate governmental agency.

(5) The commission shall not have the duty nor the power to regulate the rates of common carriers by motor vehicle which undertake, whether directly or by a lease or any other arrangement, to transport household goods.

(6) The commission shall not have the duty nor the power to regulate the rates of contract carriers by motor vehicle, who or which, under special and individual contract or agreements, and whether directly or by a lease or any other arrangement, transport household goods.

HISTORY:

Codes, 1942, § 7637; Laws, 1938, ch. 142; Laws, 1968, ch. 466; Laws, 1995, ch. 338, § 3; Laws, 2004, ch. 501, § 1, eff from and after July 1, 2004.

Cross References —

Effect of motor vehicle privilege tax law on jurisdiction of public service commission over motor carriers, see § 27-19-129.

JUDICIAL DECISIONS

1. In general.

Mississippi motor carrier regulations contain provisions very similar to federal statutes and expressly provide that state rules and regulations are to conform as nearly as practicable to those of Interstate Commerce Commission (ICC), therefore ICC standards apply in judging reasonableness of motor common carrier's attempt to retroactively collect higher rates than those negotiated, based on filed tariffs. Orr v. ICC, 912 F.2d 119, 1990 U.S. App. LEXIS 14501 (6th Cir. Tenn. 1990).

The public service commission is not automatically bound under the provisions of this section to establish classifications of groups of carriers identical with the classifications established by the West Bros., Inc. v. Mississippi Public Service Com., 186 So. 2d 202, 1966 Miss. LEXIS 1294 (Miss. 1966).

A rule of the public service commission limiting the right of common carriers of household goods to establish bases of operations and to domicile their equipment is within its power, notwithstanding such carriers hold certificates of public convenience and necessity to operate to and from all points in the state, where lack of regulation has resulted in unsound economic conditions and permitted unfair and destructive competitive practices. Mississippi Public Service Com. v. Holloway Transfer & Storage Co., 247 Miss. 184, 150 So. 2d 411, 1963 Miss. LEXIS 292 (Miss. 1963).

The public service commission's power to adopt reasonable rules for common carriers may not conflict with the statutes or revoke a previously granted right, but may be exercised in other areas. Mississippi Public Service Com. v. Holloway Transfer & Storage Co., 247 Miss. 184, 150 So. 2d 411, 1963 Miss. LEXIS 292 (Miss. 1963).

This chapter does not confer jurisdiction on the public service commission to issue certificates of public convenience and necessity for the operation of airlines along designated wholly intrastate air routes. South Mississippi Airways v. Chicago & Southern Airlines, 200 Miss. 329, 26 So. 2d 455, 1946 Miss. LEXIS 297 (Miss. 1946).

Tariff of rates, filed by motor bus carrier with commission as required by law, allowing passenger to check baggage not to exceed $25 in value without additional charge but providing that value in excess thereof must be declared an additional compensation paid, limited carrier's liability for loss of passenger's baggage to $25 where passengers did not declare a greater value, notwithstanding that passenger had no knowledge of such tariff provisions and had no conversation with carrier's agent on the subject. Campbell v. Tri-State Transit Co., 196 Miss. 367, 17 So. 2d 327, 1944 Miss. LEXIS 202 (Miss. 1944); Boston & M. Railroad v. Hooker, 233 U.S. 97, 34 S. Ct. 526, 58 L. Ed. 868, 1914 U.S. LEXIS 1275 (U.S. 1914).

The requirement of this section means that state decisions on related questions ought to conform to that of the federal Supreme Court. Campbell v. Tri-State Transit Co., 196 Miss. 367, 17 So. 2d 327, 1944 Miss. LEXIS 202 (Miss. 1944).

This statute is modelled after the Federal Motor Carrier Act of 1935, and since the two statutes are strikingly similar in their provisions, the decisions of the United States Supreme Court in exercising the power of judicial review of the action of the Interstate Commerce Commission in the granting or denying of certificates of public convenience and necessity to motor carriers engaged in interstate commerce is ample authority as to the right of judicial review, especially in view of subsection (c) of this section. Dixie Greyhound Lines, Inc. v. Mississippi Public Service Com., 190 Miss. 704, 1 So. 2d 489, 200 So. 579, 1941 Miss. LEXIS 60 (Miss. 1941).

RESEARCH REFERENCES

Am. Jur.

13 Am. Jur. 2d, Carriers §§ 22 et seq.

64 Am. Jur. 2d, Public Utilities §§ 143, 144 et seq.

CJS.

13 C.J.S., Carriers §§ 13, 14 et seq.

§ 77-7-15. Promulgation of order, rules, regulations and requirements by commission.

The commission shall prescribe, issue, amend and rescind such reasonable rules and regulations as may be reasonably necessary or appropriate to carry out the provisions of this chapter. No rule or regulation shall be effective until thirty (30) days after copies of the proposed rule or regulation have been mailed to intrastate motor carriers affected thereby and until a notice, setting forth the terms or substance thereof and the time and place of a hearing thereon, has been published in a newspaper or newspapers of general circulation in the state and filed with the Secretary of State pursuant to the Mississippi Administrative Procedures Law. Such hearing may be held at any time after twenty (20) days following the date of publication of such notice, but such rules or regulations shall not become effective until a hearing thereon. The commission may make its initial set of rules and regulations effective at the end of such thirty-day period, subject to review thereof. All rules and regulations of the commission shall be filed with its secretary and shall be readily available for public inspection and examination during reasonable business hours. Any interested person shall have the right to petition the commission for issuance, amendment or repeal of a rule or regulation.

HISTORY:

Codes, 1942, § 7637; Laws, 1938, ch. 142; Laws, 1968, ch. 466; Laws, 1992, ch. 440, § 1, eff from and after passage (approved May 4, 1992).

Cross References —

Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

§ 77-7-16. Supervision and inspection of safe operation and use of certain motor vehicles.

(1) Supervision and inspection of the safe operation and the safe use of equipment of motor vehicles operating in the state shall be a specified duty of the Mississippi Transportation Commission and the Motor Carrier Division of the Mississippi Highway Safety Patrol within the Mississippi Department of Public Safety. In accordance therewith, the Mississippi Transportation Commission shall promulgate as its own the rules, regulations, requirements and classifications of the United States Department of Transportation or any successor federal agency thereof charged with the regulation of motor vehicle safety and, along with the Motor Carrier Division of the Mississippi Highway Safety Patrol, shall enforce such rules, regulations, requirements and classifications. The Department of Public Safety shall provide training to its law enforcement officers and to law enforcement officers of the Mississippi Department of Transportation charged with the duty of enforcing the Mississippi Motor Carrier Regulatory Law of 1938 to the extent that funds are made available and training is approved under the Motor Carrier Safety Assistance Program of the Federal Motor Carrier Safety Administration. The Mississippi Transportation Commission shall establish a system of reciprocity with other states to facilitate the inspection of motor vehicles provided for in this subsection.

(2) The Mississippi Transportation Commission and the Motor Carrier Division of the Mississippi Highway Safety Patrol within the Mississippi Department of Public Safety shall have the authority to inspect for safe operation and safe use of equipment the following motor vehicles:

(a) Each holder of a certificate of convenience and necessity, a permit to operate as a contract carrier or interstate permit;

(b) Any individual, corporation or partnership engaged in a commercial enterprise operating a single motor vehicle or those in combination with a manufacturer's gross vehicle rating of more than ten thousand (10,000) pounds; and

(c) Any individual, corporation or partnership operating a motor vehicle of any gross weight transporting hazardous material that requires placarding under the Federal Hazardous Material Regulations.

(3) This section shall not apply to the following:

(a) Motor vehicles employed to transport school children and teachers;

(b) Motor vehicles owned and operated by the United States, District of Columbia or any state or any municipality or any other political subdivision of this state;

(c) Motor vehicles engaged in the occasional transportation of personal property without compensation by individuals which is not in the furtherance of a commercial enterprise;

(d) Motor vehicles engaged in the transportation of human corpses or sick or injured persons;

(e) Motor vehicles engaged in emergency or related operations;

(f) Motor vehicles engaged in the private transportation of passengers;

(g) Motor vehicles, including pick-up trucks, that have a GVWR or GCWR of Twenty-six Thousand (26,000) pounds or less, operating intrastate only, provided that such vehicle does not:

(i) Transport hazardous material requiring a placard; or

(ii) Transport sixteen (16) or more passengers, including the driver.

(h) Motor vehicles owned and operated by any farmer who:

(i) Is using the vehicle to transport agricultural products from a farm owned by the farmer, or to transport farm machinery or farm supplies to or from a farm owned by the farmer;

(ii) Is not using the vehicle to transport hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with the Federal Hazardous Material Regulations in CFR 49 part 177.823; and

(iii) Is using the vehicle within one hundred fifty (150) air miles of the farmer's farm, and the vehicle is a private motor carrier of property.

(i) Motor vehicles engaged in the transportation of logs and pulpwood between the point of harvest and the first point of processing the harvested product;

(j) Motor vehicles engaged exclusively in hauling gravel, soil or other unmanufactured road building materials;

(k) As to hours of service only, utility service vehicles owned or operated by public utilities subject to regulation by the commission, while in intrastate commerce within this state, with a manufacturer's gross vehicle rating of less than twenty-six thousand one (26,001) pounds, unless the vehicle:

(i) Transports hazardous materials requiring a placard; or

(ii) Is designed or used to transport sixteen (16) or more people, including the driver.

(4) Anyone who violates or fails to comply with this section shall be subject to the penalties as provided for in Section 77-7-311, Mississippi Code of 1972.

HISTORY:

Laws, 1988, ch. 544, § 1; Laws, 1993, ch 561, § 2; Laws, 2005, ch. 446, § 1; Laws, 2007, ch. 304, § 2; Laws, 2007, ch. 498, § 1, eff from and after July 1, 2007.

Joint Legislative Committee Note —

Section 2 of ch. 304, Laws of 2007, effective from and after July 1, 2007 (approved March 7, 2007), amended this section. Section 1 of ch. 498, Laws of 2007, effective July 1, 2007 (approved March 27, 2007), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 498, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes —

Laws of 2007, ch. 498, § 3 provides:

"SECTION 3. It is the intent of the Legislature that the amendments to Sections 77-7-16 and 45-3-21, Mississippi Code of 1972, contained in Laws of 2007, ch. 498, shall supercede the amendments to Section 77-7-16 contained in Laws of 2007, ch. 304, and to Section 45-3-21, contained in Laws of 2007, ch. 439."

Cross References —

Mississippi Transportation Commission, see § 65-1-3.

Mississippi Highway Safety Patrol generally, see §§ 45-3-1 et seq.

Mississippi Motor Carrier Regulatory Law of 1938, see §§ 77-7-1 et seq.

Penalties for violating the provisions of this section, see § 77-7-311.

Federal Aspects—

United States Department of Transportation, see generally 49 USCS §§ 101 et seq.

Commercial motor vehicle safety generally, see 49 USCS §§ 31101 et seq.

Federal Motor Carrier Safety Administration, Department of Transportation, Commercial Motor Carrier Safety Assistance Program, 49 CFR Part 350.

§ 77-7-17. Prohibited interests of commissioners and employees.

No member of the commission, and no employee of the commission appointed or employed in the administration of this chapter, shall in any manner have pecuniary interest in, own any securities of, or hold any position with any motor carrier.

HISTORY:

Codes, 1942, § 7638; Laws, 1938, ch. 142; Laws, 1993, ch 561, § 3, eff from and after October 1, 1993.

Cross References —

Prohibition against commission members having any interest in any railroad, common or contract carrier by motor vehicle, telephone company, or gas or electric utility, see § 77-1-1.

§ 77-7-19. Repealed.

Repealed by Laws, 1993, ch. 561, § 22, eff from and after October 1, 1993. [Codes, 1942, § 7669; Laws, 1938, ch. 142]

Editor's Notes —

Former § 77-7-19 provided that motor carriers would furnish free transportation to commission members, officers and employees.

§ 77-7-21. Engagement in intrastate operation by restricted motor carriers.

No restricted motor carrier not exempted in this chapter shall engage in intrastate operation on any highway within the state unless such carrier is in compliance with the requirements of the laws and regulations of the commission.

HISTORY:

Laws, 1995, ch. 338, § 19, eff from and after passage (approved March 10, 1995); Laws, 2018, ch. 332, § 2, eff from and after passage (approved March 8, 2018).

Amendment Notes —

The 2018 amendment, effective March 8, 2018, deleted "Public Service" preceding "commission" near the end.

§ 77-7-23. Promulgation of regulations governing restricted motor carriers.

The commission shall promulgate rules, regulations and procedures for the regulation of minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization, safety of operations and appointment of agents of service of process for restricted motor carriers.

HISTORY:

Laws, 1995, ch. 338, § 20, eff from and after passage (approved March 10, 1995); Laws, 2018, ch. 332, Laws, 2018, ch. 332, § 3, eff from and after passage (approved March 8, 2018)., eff from and after passage (approved March 8, 2018).

Amendment Notes —

The 2018 amendment, effective March 8, 2018, deleted "Public Service" preceding "commission" near the beginning.

RESEARCH REFERENCES

ALR.

Effect of Motor Carrier Act Provisions on insurance and indemnity agreements (49 U.S.C.S. §§ 13906, 14102) in allocating losses involving interstate motor carriers. 157 A.L.R. Fed. 549.

§ 77-7-25. Exemption of certain commercial motor vehicles from federal regulations; exceptions.

Notwithstanding the provisions of this chapter to the contrary, Parts 390 through 397, Title 49, Code of Federal Regulations, shall not apply to commercial motor vehicles operated in intrastate commerce to transport property which have a gross vehicle weight rating or gross combination weight rating of twenty-six thousand (26,000) pounds or less. The exception provided by this section shall not apply to vehicles transporting hazardous materials required to be placarded, or to vehicles designed to transport sixteen (16) or more passengers, including the driver, as defined in Title 49 of the Code of Federal Regulations.

HISTORY:

Laws, 2007, ch. 304, § 3, eff from and after July 1, 2007.

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; PERMITS; INTERSTATE PERMITS

Sec.
77-7-41. Certificates of public convenience and necessity required.
77-7-43. Application for certificate.
77-7-45. Hearing on application for certificate; disposition.
77-7-47. Temporary certificates.
77-7-49. Permits required.
77-7-51. Application for permit; disposition.
77-7-53. Permit, certificate of convenience and necessity, or other authority for interstate carriers; receipts.
77-7-55. Fees for certificates and permits.
77-7-57. Repealed.
77-7-59. Amendment, suspension and revocation of certificates and permits.
77-7-61. Sale or transfer of certificates and permits.

§ 77-7-41. Certificates of public convenience and necessity required.

No common carrier by motor vehicle not exempted in this chapter shall engage in intrastate operation on any highway within the state unless there is in force with respect to such carrier, a certificate of public convenience and necessity issued by the commission authorizing such operation. Any certificates of public convenience and necessity issued by the commission prior to March 8, 2018, are hereby ratified and adopted as valid and enforceable just as if they had been issued after March 8, 2018.

All certificates of public convenience and necessity issued under this chapter shall be exempt from ad valorem taxation.

HISTORY:

Codes, 1942, §§ 7639, 7663; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 4, eff from and after passage (approved March 10, 1995); Laws, 2018, ch. 332, § 4, eff from and after passage (approved March 8, 2018).

Amendment Notes —

The 2018 amendment, effective March 8, 2018, added the last sentence in the first paragraph.

Cross References —

Certificate of public convenience and necessity required of public utilities generally, see § 77-3-11.

JUDICIAL DECISIONS

1. In general.

Each common carrier by motor vehicle engaged in intrastate operations is required to obtain from the public service commission a certificate of public convenience and necessity. Campbell Sixty-Six Express, Inc. v. Delta Motor Line, Inc., 218 Miss. 198, 67 So. 2d 252, 1953 Miss. LEXIS 530 (Miss. 1953).

This section does not apply to transportation by air. South Mississippi Airways v. Chicago & Southern Airlines, 200 Miss. 329, 26 So. 2d 455, 1946 Miss. LEXIS 297 (Miss. 1946).

This statute is modelled after the Federal Motor Carrier Act of 1935, and since the two statutes are strikingly similar in their provisions, the decisions of the United States Supreme Court in exercising the power of judicial review of the action of the interstate commerce commission in the granting or denying of certificates of public convenience and necessity to motor carriers engaged in interstate commerce is ample authority as to the right of judicial review, especially in view of § Dixie Greyhound Lines, Inc. v. Mississippi Public Service Com., 190 Miss. 704, 1 So. 2d 489, 200 So. 579, 1941 Miss. LEXIS 60 (Miss. 1941).

RESEARCH REFERENCES

Am. Jur.

13 Am. Jur. 2d, Carriers §§ 82 et seq.

CJS.

37 C.J.S., Franchises §§ 6 et seq.

Lawyers' Edition.

State tax or fee imposed for motor carrier's use of highways as violating commerce clause (Article 1, § 8, clause 3) of Federal Constitution–Supreme Court cases. 97 L. Ed. 2d 843.

§ 77-7-43. Application for certificate.

Applications for a certificate shall be made in writing, shall be verified under oath, shall be in the form and shall contain the information as the commission may require.

HISTORY:

Codes, 1942, § 7640; Laws, 1938, ch. 142; Laws, 1993, ch 561, § 4, eff from and after October 1, 1993.

RESEARCH REFERENCES

Am. Jur.

13 Am. Jur. 2d, Carriers § 81.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Forms 41 et seq. (proceedings involving certificates of public convenience).

§ 77-7-45. Hearing on application for certificate; disposition.

(1) Upon the filing of an application for a certificate of public convenience and necessity the commission shall notify the applicant and other parties known to have a substantial interest in the application of the time and place for a public hearing, not less than twenty (20) days prior thereto, and shall hear and determine the application within a reasonable length of time. In determining whether the certificate shall be granted, the commission shall, among other things, give due consideration to the present transportation facilities over the proposed route of the applicant, the volume of traffic over the route, the financial condition of the applicant, and the condition of the highway over the proposed route, or routes.

(2) If the commission shall find the proposed operation justified, and that the applicant is fit, willing and able to perform properly the services proposed and to conform to the provisions of this chapter and the requirements, rules and regulations of the commission, it shall issue a certificate to the applicant, subject to terms, limitations and restrictions as the commission may deem proper, authorizing in whole or in part the operations covered by the application. If the commission shall find the proposed operation not justified, the application shall be denied.

(3) Notwithstanding any provision of this section to the contrary, the certificate as applied for may be granted without a hearing in uncontested cases; however, the commission may hear any uncontested case if it determines that the public interest will be served thereby.

HISTORY:

Codes, 1942, §§ 7641, 7642; Laws, 1938, ch. 142; Laws, 1948, ch. 327, § 13; Laws, 1987, ch. 309, § 1; Laws, 1993, ch 561, § 5, eff from and after October 1, 1993.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Factors considered in determining public convenience and necessity.
3. Grant or denial of certificate.
4. Review.

1. In general.

Where the public service commission issued order granting to motor carrier a certificate to carry commodities over regular routes among various points already served by another carrier which provided only call and demand service, this was not a determination that the respective carriers were in different, uncompeting classes. West Bros., Inc. v. H & L Delivery Service, Inc., 220 Miss. 323, 70 So. 2d 870, 1954 Miss. LEXIS 444 (Miss. 1954).

Where a motor carrier and railroad subsidiary each sought a certificate of convenience for the establishment of a bus line over a designated route, over a portion of which the motor carrier was at the time maintaining a route, it was not necessary that an order of the public service commission, denying the application of the railroad subsidiary, should have recited more than the fact that the rival application had been granted over the proposed new route and that the duplication of certificate rights over the existing route was unjustified. Tri-State Transit Co. v. Mobile & Ohio Transp. Co., 191 Miss. 364, 2 So. 2d 845, 1941 Miss. LEXIS 164 (Miss. 1941).

Whether a railroad should have been given preference and allowed to operate busses over highways paralleling its lines of railway, through subsidiary bus companies, before any certificates of public convenience and necessity were ever issued to other motorbus transportation companies over such routes, was a legislative question and not a judicial one. Tri-State Transit Co. v. Mobile & Ohio Transp. Co., 191 Miss. 364, 2 So. 2d 845, 1941 Miss. LEXIS 164 (Miss. 1941).

State could not, on relation of district attorney, sue to restrain bus companies, having franchise from railroad commission to use highway, from continuing to use state highway, on ground they were wrongfully using highway to extent constituting public nuisance. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

2. Factors considered in determining public convenience and necessity.

In determining public convenience and necessity, the commission must at one view consider the entire public need, the condition of the highways, the extent and hazards of travel, especially the danger caused by large busses frequently stopping along highways to discharge and take on passengers, the economic situation, cost to the public, the financial condition and ability of public operators to render proper service, and many other questions. Tri-State Transit Co. v. Gulf Transport Co., 201 Miss. 744, 29 So. 2d 825, 1947 Miss. LEXIS 444 (Miss. 1947).

Certificate of public convenience and necessity should not be granted to a motor carrier where there is existing adequate service over the route applied for, or, even if inadequate, unless the existing carrier has been given an opportunity to furnish such additional service as may be required. Tri-State Transit Co. v. Dixie Greyhound Lines, Inc., 197 Miss. 37, 19 So. 2d 441, 1944 Miss. LEXIS 273 (Miss. 1944); Campbell Sixty-Six Express, Inc. v. Delta Motor Line, Inc., 246 Miss. 533, 151 So. 2d 191, 1963 Miss. LEXIS 476 (Miss. 1963); Southern Bus Lines, Inc. v. Mississippi Public Service Com., 210 Miss. 606, 50 So. 2d 149, 1951 Miss. LEXIS 298 (Miss. 1951); Dixie Greyhound Lines v. Am. Buslines, 209 Miss. 874, 48 So. 2d 584, 1950 Miss. LEXIS 453 (Miss. 1950).

Where evidence in support of application for certificate of public convenience and necessity to operate as a common carrier of freight by motor vehicle showed that four business men were dissatisfied with the service provided by the existing carriers, this did not constitute substantial evidence of inadequacy of existing service in view of no substantial evidence in the record of inadequacy or insufficiency of service on the part of carriers now operating. Campbell Sixty-Six Express, Inc. v. Delta Motor Line, Inc., 218 Miss. 198, 67 So. 2d 252, 1953 Miss. LEXIS 530 (Miss. 1953).

In determining whether a certificate of public convenience and necessity should be granted, the commission shall give due consideration to the present transportation facilities over the proposed route of the applicant, the volume of traffic over such route, the financial condition of the applicant, and the condition of the highway over the proposed route, or routes. Campbell Sixty-Six Express, Inc. v. Delta Motor Line, Inc., 218 Miss. 198, 67 So. 2d 252, 1953 Miss. LEXIS 530 (Miss. 1953).

In granting of certificate of public convenience and necessity to operate a common carrier, the Mississippi Public Service Commission must give due consideration to existing facilities. Dixie Greyhound Lines v. Am. Buslines, 209 Miss. 874, 48 So. 2d 584, 1950 Miss. LEXIS 453 (Miss. 1950).

In determining public convenience and necessity, the commission must at one view consider the entire public need, the condition of the highways, the extent and hazards of travel, especially the danger caused by large busses frequently stopping along highways to discharge and take on passengers, the economic situation, cost to the public, the financial condition and ability of public operators to render proper service, and many other questions. Tri-State Transit Co. v. Gulf Transport Co., 201 Miss. 744, 29 So. 2d 825, 1947 Miss. LEXIS 444 (Miss. 1947).

3. Grant or denial of certificate.

A circuit court erred in finding that an order of the Public Service Commission granting a certificate of convenience and necessity to a carrier to enable it to engage in intrastate shipping was unsupported by substantial evidence, where the record was replete with evidence from which the Public Service Commission could have concluded that granting the carrier the certificate was justified as a matter of public convenience and necessity, even though protesting carriers offered voluminous evidence to the contrary. Mississippi Public Service Com. v. Merchants Truck Line, Inc., 598 So. 2d 778, 1992 Miss. LEXIS 193 (Miss. 1992).

On an application to the public service commission for certificate of public convenience and necessity to operate as a limited common carrier of freight by motor vehicles between certain specified points in the state, where permission was granted to the applicant to traverse one of the highways which was already serviced by a motor carrier under a permit granted previously, the commission should have ordered closed door travel on the highways served by such carriers except as to freight originating or destined to other highway area. Garrett v. Delta Motor Lines, Inc., 224 Miss. 559, 82 So. 2d 577, 1955 Miss. LEXIS 522 (Miss. 1955).

Where a railroad sought a certificate to operate a proposed freight service by motor truck in lieu of trains for the pick up and delivery of such freight by truck at the same railroad station where it had been picking up and delivering the same by train in a depot-to-depot service, a certificate was properly granted over the protests of competing motor carriers. West Bros. v. Illinois C. R. Co., 222 Miss. 335, 75 So. 2d 723, 1954 Miss. LEXIS 650 (Miss. 1954).

Where the railroad discontinued its passenger train and therefore brought about the lack of express service along the route and later sought a certificate to operate the trucks for the transportation of express, the public service commission was entitled to consider the interests of the public even though the serving of the need of express by granting the application would result in some benefit to the railroad. West Bros. v. Illinois C. R. Co., 222 Miss. 335, 75 So. 2d 723, 1954 Miss. LEXIS 650 (Miss. 1954).

A certificate of public convenience and necessity to operate as a common carrier, granted to a bus line which duplicates the routes of two other bus lines is contrary to the law and certificate should be canceled. Southern Bus Lines, Inc. v. Mississippi Public Service Com., 210 Miss. 606, 50 So. 2d 149, 1951 Miss. LEXIS 298 (Miss. 1951).

Application for extension of the authority of a motorbus carrier was properly denied where the route proposed was already covered by another carrier that was willing to alter its operations to eliminate delays in transfers of passengers for a large city; that the applicant, if the authority were extended, would be in a position to issue to and from a large city interchangeable tickets with a railroad and would have transportation into that city, already adequately served, were not controlling. Tri-State Transit Co. v. Gulf Transport Co., 201 Miss. 744, 29 So. 2d 825, 1947 Miss. LEXIS 444 (Miss. 1947).

Findings of the public service commission that appellee was entitled to a certificate as a common carrier of commodities generally over designated routes upon proof of bona fide operations within the purview of this section [Code 1942, § 7639] would not be disturbed, notwithstanding that documents introduced to establish such operation, consisting of numerous freight bills, appeared to be those of the Luter Truck Lines Inc., overstamped in the name of appellee, where the ambiguities thus presented were supplemented by oral proof not inconsistent with the commission's findings and there was substantially more than a scintilla of evidence of a bona fide operation by appellee over the designated routes. Gulf Mobile & O. R. R. v. Luter Motor Express, 194 Miss. 407, 12 So. 2d 420, 1943 Miss. LEXIS 68 (Miss. 1943).

Evidence did not constitute substantial proof of public convenience and necessity to sustain the granting of a certificate to applicant over a portion of the route applied for which was being adequately served by an existing motor carrier, but justified granting of a certificate as to another portion of the route where convenience and necessity required it, the operation to be with "closed doors" between certain points and with restrictions as to taking on passengers. Dixie Greyhound Lines, Inc. v. Mississippi Public Service Com., 190 Miss. 704, 1 So. 2d 489, 200 So. 579, 1941 Miss. LEXIS 60 (Miss. 1941).

The commission properly refused a certificate of convenience and necessity applied for by a corporation engaged primarily in compressing and warehousing cotton on the ground that it had no charter power to conduct the business of a carrier for hire either as a common or restricted carrier, where its corporate charter gave it the right to construct, purchase and maintain gins, compressors, and warehouses with the incidental power to construct, hire, purchase, operate and maintain all or any conveyances for the transportation in cold storage by land or by water of any and all products, goods or manufactured articles, the latter provision being incidental to its warehouse and compress business and not giving it authority to operate as a public utility. Mississippi-Gulfport Compress & Warehouses, Inc. v. Public Service Com., 189 Miss. 166, 196 So. 793, 1940 Miss. LEXIS 121 (Miss. 1940).

4. Review.

The supreme court should not substitute its judgment for that of the commission and the action of the commission should not be reversed so long as the commission has acted within its powers and such action is supported by substantial evidence and is not arbitrary or capricious. Tri-State Transit Co. v. Gulf Transport Co., 201 Miss. 744, 29 So. 2d 825, 1947 Miss. LEXIS 444 (Miss. 1947).

RESEARCH REFERENCES

Am. Jur.

13 Am. Jur. 2d, Carriers §§ 81 et seq.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Forms 41 et seq. (proceedings involving certificates of public convenience).

§ 77-7-47. Temporary certificates.

If the commission should decide that an emergency exists at any time, said commission is hereby authorized and empowered to issue a temporary certificate of convenience and necessity or temporary contract carrier permit to fit applicants, and the State Tax Commission is hereby authorized to collect inspection fees and issue temporary identification credentials to any owner or operator to whom a temporary certificate of convenience and necessity or a temporary contract carrier permit has been issued by the Public Service Commission. The State Tax Commission is also hereby authorized to issue to holders of temporary certificates of convenience and necessity or temporary contract carrier permits the necessary road and bridge privilege license tax temporary permits in the same manner as temporary or seasonal permits are now issued under the provisions of Chapter 19 of Title 27, Mississippi Code of 1972. No temporary certificate of convenience and necessity or contract carrier permit shall be issued by the commission for a period of time less than one (1) month or longer than six (6) months. Reissue of such certificate or permit is hereby authorized if, in the opinion of the commission, such is justified.

HISTORY:

Codes, 1942, § 7641; Laws, 1938, ch. 142; Laws, 1948, ch. 327, § 13; Laws, 1987, ch. 309, § 2, eff from and after July 1, 1987.

Editor's Notes —

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' "Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References —

Issuance by motor vehicle comptroller of temporary and seasonal permits, see § 27-19-77.

Public Service Commission, see §§ 77-1-1 et seq.

§ 77-7-49. Permits required.

No contract carrier by motor vehicle, not exempted in this chapter, shall engage in intrastate operation on any highway within the state unless there is in force with respect to such carrier a permit issued by the commission, authorizing such operation.

All permits issued under this chapter shall be exempt from ad valorem taxation.

HISTORY:

Codes, 1942, §§ 7648, 7663; Laws, 1938, ch. 142.

RESEARCH REFERENCES

Am. Jur.

13 Am. Jur. 2d, Carriers §§ 100 et seq.

§ 77-7-51. Application for permit; disposition.

(1) Applications for permits shall be made to the commission in writing, shall be verified under oath, shall be in the form and contain the information as the commission may by regulation require. A permit shall be issued to any qualified applicant therefor authorizing in whole or in part, the operations

covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able to perform properly the service of a contract carrier by motor vehicle, and to conform to the provisions of this chapter and the lawful requirements, rules and regulations of the commission thereunder, and that the proposed operation, to the extent authorized by the permit, will be consistent with the public interest and the policy declared in Section 77-7-3; otherwise, the application shall be denied.

(2) The commission shall specify in the permit the business of the contract carrier covered thereby, and the scope thereof, and shall attach to it, at the time of issuance, and from time to time thereafter, reasonable terms, conditions and limitations consistent with the character of the holder as a contract carrier that are necessary to carry out, with respect to the operations of the carrier, the requirements established by the commission under authority of this chapter. However, no terms, conditions or limitations shall restrict the right of the carrier to substitute or add contracts within the scope of the permit, or to add to his, or her or its equipment or facilities, within the scope of permit, as the development of the business and the demands of the public may require.

(3) Notwithstanding any provision of this section to the contrary, the certificate as applied for may be granted without a hearing in uncontested cases; however, the commission may hear any uncontested case if it determines that the public interest will be served thereby.

HISTORY:
Codes, 1942, § 7649; Laws, 1938, ch. 142; Laws, 1993, ch 561, § 6, eff from and after October 1, 1993.

RESEARCH REFERENCES

Am. Jur.
13 Am. Jur. 2d, Carriers § 100.

§ 77-7-53. Permit, certificate of convenience and necessity, or other authority for interstate carriers; receipts.

(1) It is unlawful for any motor carrier to use any of the public highways of this state for the transportation of persons or property, or both, in interstate commerce, without first having obtained a certificate of convenience and necessity, permit or other authority from the Interstate Commerce Commission and having obtained from the carrier's single registration state a receipt showing that the registration fees for the State of Mississippi have been paid.

(2) Interstate motor carriers shall be held subject to rules and regulations as the commission may legally prescribe; however, it is not intended to give the commission any right or power to impose upon or exact from any applicant any general revenue tax of any nature.

(3) All interstate receipts issued under this chapter shall be exempt from ad valorem taxation.

HISTORY:
Codes, 1942, §§ 7663, 7674; Laws, 1938, ch. 142; Laws, 1987, ch. 309, § 3; Laws, 1993, ch 561, § 7, eff from and after October 1, 1993.

§ 77-7-55. Fees for certificates and permits.

Upon the filing of an application for a certificate of convenience and necessity, the applicant shall deposit with the commission as a fee, the sum of Fifty Dollars ($50.00), and for the transfer, sale, assignment or lease of such certificate, the sum of Fifty Dollars ($50.00), and for the issuance of a duplicate certificate, the sum of Two Dollars ($2.00).

Upon the filing of an application for a permit as a contract carrier, the applicant shall deposit with the commission as a fee for the issuance thereof, the sum of Fifty Dollars ($50.00), and for the issuance of a duplicate permit, the sum of Two Dollars ($2.00).

All of the fees provided for by this section shall be paid by the commission into the State Treasury to be there placed in the special fund designated by the commission. The fees herein provided for respecting applications for certificates, permits and for the approval of sale, transfer, lease or assignment may not be returned to an applicant after the application has been processed.

HISTORY:
Codes, 1942, § 7676; Laws, 1938, ch. 142; Laws, 1987, ch. 309, § 4; Laws, 1993, ch 561, § 8, eff from and after October 1, 1993; Laws, 2018, ch. 332, § 5, eff from and after passage (approved March 8, 2018).

Amendment Notes —
The 2018 amendment, effective March 8, 2018, substituted "designated by the commission" for "designated as 'Motor Carriers Regulation Account'" at the end of the first sentence of the last paragraph.

RESEARCH REFERENCES

CJS.
13 C.J.S., Carriers § 31.

§ 77-7-57. Repealed.

Repealed by Laws, 1995, ch. 338, § 21, eff from and after passage (approved March 10, 1995).

[Codes, 1942, § 7650; Laws, 1938, ch. 142]

Editor's Notes —
Former § 77-7-57 related to carriers holding both a certificate as a common carrier and a permit as a contract carrier.

§ 77-7-59. Amendment, suspension and revocation of certificates and permits.

Certificates and permits shall be effective from the date specified therein, and shall remain in effect until terminated as herein provided.

Any such certificate or permit may, upon application of the holder thereof, in the discretion of the commission, be amended or revoked, in whole or in part. Any such certificate or permit may, upon complaint or upon the commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for wilful failure to comply with any provision of this chapter, or with any lawful order, rule, or regulation of the commission promulgated thereunder, or with any term, condition, or limitation of such certificate or permit. However, no such certificate or permit shall be revoked (except upon application of the holder) unless the holder thereof wilfully fails to comply, within a reasonable time, not more than ninety (90) days, to be fixed by the commission, with a lawful order of the commission, made as provided herein, commanding obedience to the provisions of this chapter, or to the lawful order, rule, or regulation of the commission thereunder, or to the term, condition, or limitation of such certificate or permit, found by the commission to have been violated by such holder.

HISTORY:
Codes, 1942, § 7651; Laws, 1938, ch. 142.

JUDICIAL DECISIONS

1. In general.
The public service commission is not required to proceed under this section in adopting a regulation as to the domiciling of equipment by common carriers of household goods holding state-wide certificates of public convenience and necessity. Mississippi Public Service Com. v. Holloway Transfer & Storage Co., 247 Miss. 184, 150 So. 2d 411, 1963 Miss. LEXIS 292 (Miss. 1963).

Where no proceeding for revocation of a carrier's certificate has been instituted, the certificate remains valid and outstanding, despite the fact that the carrier has not operated the certificate since 1949. McGehee v. Wolchansky, 217 Miss. 88, 63 So. 2d 549, 1953 Miss. LEXIS 413 (Miss. 1953).

RESEARCH REFERENCES

Am. Jur.
13 Am. Jur. 2d, Carriers §§ 92 et seq.

§ 77-7-61. Sale or transfer of certificates and permits.

(1) It shall be lawful, under the conditions specified below, for motor carriers to sell, assign, lease or transfer certificates or permits issued to them under the provisions of this chapter.

Whenever a purchase, lease, assignment or transfer is proposed under this section, the carrier or carriers or the person seeking authority therefor shall present an application to the commission in the form that may be prescribed by the commission, and thereupon the commission shall notify the applicant or applicants and other parties known to have a substantial interest in the proceedings of the time and place for a public hearing should the purchase, lease, assignment or transfer be protested or the commission otherwise requires one, not less than twenty (20) days prior thereto. If, after the hearing, the commission finds that the transaction proposed is in good faith, that the proposed assignee, lessee, purchaser or transferee is fit and able properly to perform the transportation services authorized by such certificate or permit and to comply with the rules, regulations and requirements of the commission, and that the transaction is otherwise consistent with the public interest, it may enter an order approving and authorizing sale, lease, assignment or transfer upon terms and conditions as it shall find to be just and reasonable and with modifications as it may prescribe.

It shall be unlawful for any person, except as provided in this section, to accomplish or effectuate, or to participate in the accomplishing and effectuating, the sale, lease, assignment or transfer of a certificate or permit, however the result is attained.

(2) The commission is hereby authorized, upon complaint or upon its own initiative, to investigate and determine whether any person is violating the provisions of the preceding paragraph of this section.

(3) Notwithstanding any provision of this section to the contrary, the certificates as applied for may be granted without a hearing in uncontested cases; however, the commission may hear any uncontested case if it determines that the public interest will be served thereby.

HISTORY:

Codes, 1942, § 7652; Laws, 1938, ch. 142; Laws, 1987, ch. 309, § 5; Laws, 1993, ch 561, § 9, eff from and after October 1, 1993.

JUDICIAL DECISIONS

1. In general.

Security interest transaction does not transfer control over certificate, and thus does not fall within statute. Dorman v. Rowell, 515 So. 2d 1214, 1987 Miss. LEXIS 2918 (Miss. 1987).

Commission's power is circumscribed by its statutorily granted power to protect public interest with respect to use of highways, and no where in statute did legislature authorize Public Service Commission to inquire into transactions between corporations and their fiduciaries to determine whether they were inherently fair to shareholders or creditors. It is not within purview of Public Service Commission to enforce creditors' liens and set aside transfer of certificate of necessity made to evade creditors, except as they affect public interest in regulating motor carriers. Dorman v. Rowell, 515 So. 2d 1214, 1987 Miss. LEXIS 2918 (Miss. 1987).

Where the commission's approval of the transfer of a certificate of convenience and necessity from an individual to a corporation controlled by him was obtained without disclosure of a sale of his stock to others, the commission, instead of requiring that operations under such certificate be discontinued, should have required the parties to show cause why its approval of the transfer should not be set aside. Mississippi Public Service Com. v. Chambers, 235 Miss. 133, 108 So. 2d 550, 1959 Miss. LEXIS 411 (Miss. 1959).

A change in ownership of carrier's certificate of public convenience and necessity which enables the existing rights to be used in a way that will produce a better service is consistent with public service. McGehee v. Wolchansky, 217 Miss. 88, 63 So. 2d 549, 1953 Miss. LEXIS 413 (Miss. 1953).

Refusal of railroad commission to permit bus company, which had leased its franchise to operate bus schedule to competing company, to operate bus schedule, did not deprive bus company of its franchise without due process, since bus company had remedy in court if deprived of franchise rights. Dixie Greyhound Lines, Inc. v. Mississippi R. Com., 174 Miss. 1, 163 So. 443, 1935 Miss. LEXIS 31 (Miss. 1935).

Order of railroad commission denying bus company's claim to operate bus schedule was legislative and administrative and not judicial, and was not reviewable on appeal. Dixie Greyhound Lines, Inc. v. Mississippi R. Com., 174 Miss. 1, 163 So. 443, 1935 Miss. LEXIS 31 (Miss. 1935).

RESEARCH REFERENCES

Am. Jur.

13 Am. Jur. 2d, Carriers §§ 84 et seq.

PERFORMANCE BOND; INSURANCE

Sec.
77-7-81. Repealed.
77-7-83. Insurance required of certificate holders.
77-7-85. Insurance required of permit holders.
77-7-87. Insurance required of interstate carriers.
77-7-89. Insurance policy or bond shall not be cancelled until notice is given to commission.
77-7-91. Actions against motor carriers and sureties.
77-7-93. Effect of failure to comply with performance bond and insurance requirements.

§ 77-7-81. Repealed.

Repealed by Laws, 1987, ch 309, § 6, eff from and after July 1, 1987. [Codes, 1942, § 7653; Laws, 1938, ch. 142]

Editor's Notes —

Former § 77-7-81 required that a performance bond be filed and approved before a certificate or permit could be issued.

§ 77-7-83. Insurance required of certificate holders.

Each holder of a certificate authorizing operation as a common carrier by motor vehicle, or the holder of a contract permit issued by the commission, shall keep in force at all times an insurance policy or a certificate of insurance in lieu thereof, issued by some insurance company or association or other insurer authorized to transact business in this state, or bond or bonds, to be approved by the commission, in an amount required by the commission, conditioned to pay any final judgment against the carrier for personal injuries or property damage resulting from or arising out of the use, maintenance or operation of the motor vehicles of such carrier and suffered by any member of the public or by the state or any of its political subdivisions. The amount of the insurance policy or bond required by the commission under this section shall in no case be less than the insurance requirements of the United States Department of Transportation as set out in 49 CFR part 387.

HISTORY:

Codes, 1942, § 7654; Laws, 1938, ch. 142; Laws, 1958, ch. 507; Laws, 1968, ch. 533, § 1; Laws, 1993, ch 561, § 10; Laws, 1995, ch. 338, § 5, eff from and after passage (approved March 10, 1995).

JUDICIAL DECISIONS

1. In general.

A policy issued pursuant to the requirements of a previous enactment of this statute (§ 7124, Code 1930) must be construed in the light of the words of the statute and of its purpose and content. Accordingly, such a policy will be deemed to cover injuries sustained by a passenger riding in a taxicab provided by the insured, because its own vehicle was insufficient to carry all the passengers. Lloyds America v. Ferguson, 116 F.2d 920, 1941 U.S. App. LEXIS 4755 (5th Cir. Miss. 1941).

The object and purpose of requiring the operator of a public fund to carry insurance is the protection of the public and the applicable provisions of the statutes are written into and become a part of the policy. Commercial Casualty Ins. Co. v. Skinner, 190 Miss. 533, 1 So. 2d 225, 1941 Miss. LEXIS 76 (Miss. 1941).

Fact that the motor number of a bus insured by policy as required hereunder did not correspond with that contained in the policy because of replacement of the old motor did not release the insurer from liability for injuries to third persons growing out of the use and operation of such motorbus. Commercial Casualty Ins. Co. v. Skinner, 190 Miss. 533, 1 So. 2d 225, 1941 Miss. LEXIS 76 (Miss. 1941).

RESEARCH REFERENCES

ALR.

Coverage of policy insuring motor carrier against liability for loss of or damage to shipped property. 36 A.L.R.2d 506.

Liability of land carrier to passenger who becomes victim of another passenger's assault. 43 A.L.R.4th 189.

Effect of Motor Carrier Act Provisions on insurance and indemnity agreements (49 U.S.C.S. §§ 13906, 14102) in allocating losses involving interstate motor carriers. 157 A.L.R. Fed. 549.

§ 77-7-85. Insurance required of permit holders.

Each holder of a permit as a contract carrier by motor vehicle issued by the commission shall keep on file with the commission an insurance policy or a certificate of insurance in lieu thereof, issued by some insurance company or association or other insurer authorized to transact business in this state, or bond or bonds, to be approved by the commission, conditioned to pay any final judgment against said contract carrier for personal injuries or property damage resulting from or arising out of the use, maintenance or operation of the motor vehicles of such carrier, and suffered by any member of the public or by the state or any of its political subdivisions. However, such carrier shall not be required to file a policy of insurance or bond conditioned to pay the judgments on claims of its passengers, or shippers or patrons. The minimum amount of such insurance policy or bond shall be as provided in Section 77-7-83.

HISTORY:

Codes, 1942, § 7654; Laws, 1938, ch. 142; Laws, 1958, ch. 507; Laws, 1968, ch. 533, § 1, eff from and after passage (approved July 8, 1968).

JUDICIAL DECISIONS

1. In general.

A policy issued pursuant to the requirements of a previous enactment of this statute (§ 7124, Code of 1930) most be construed in the light of the words of the statute and of its purpose and content. Accordingly, such a policy will be deemed to cover injuries sustained by a passenger riding in a taxicab provided by the insured, because its own vehicle was insufficient to carry all the passengers. Lloyds America v. Ferguson, 116 F.2d 920, 1941 U.S. App. LEXIS 4755 (5th Cir. Miss. 1941).

The object and purpose of requiring the operator of a public fund to carry insurance, as to the application of previous enactment of similar section (§ 7124, Code 1930), is the protection of the public and the applicable provisions of the statutes are written into and become a part of the policy. Commercial Casualty Ins. Co. v. Skinner, 190 Miss. 533, 1 So. 2d 225, 1941 Miss. LEXIS 76 (Miss. 1941).

Fact that the motor number of a bus insured by policy as required hereunder did not correspond with that contained in the policy because of replacement of the old motor did not release the insurer from liability for injuries to third persons growing out of the use and operation of such motorbus. Commercial Casualty Ins. Co. v. Skinner, 190 Miss. 533, 1 So. 2d 225, 1941 Miss. LEXIS 76 (Miss. 1941).

RESEARCH REFERENCES

ALR.

Coverage of policy insuring motor carrier against liability for loss of or damage to shipped property. 36 A.L.R.2d 506.

Effect of Motor Carrier Act Provisions on insurance and indemnity agreements (49 U.S.C.S. §§ 13906, 14102) in allocating losses involving interstate motor carriers. 157 A.L.R. Fed. 549.

§ 77-7-87. Insurance required of interstate carriers.

Each motor carrier holding certificates or permits from and operating under the authority of the Interstate Commerce Commission, in interstate business only, shall file and keep on file with the commission a policy or certificate of insurance, bond or certification of qualification as a self-insurer which complies with the Interstate Commerce Commission's requirements for the single state insurance registration program, conditioned to pay any final judgment against such interstate carrier for personal injury or property damage resulting from or arising out of the use, maintenance or operation of the motor vehicles of such interstate carrier, and suffered by any member of the public, or by the state or any of its subdivisions. However, no interstate carrier shall be required to file insurance or bond conditioned to pay the judgments on claims of its passengers, shippers, or patrons. The minimum amount of the insurance policy, certificate or bond shall be as provided in 49 CFR part 387.

HISTORY:
Codes, 1942, § 7655; Laws, 1938, ch. 142; Laws, 1968, ch. 534; Laws, 1993, ch 561, § 11, eff from and after October 1, 1993.

RESEARCH REFERENCES

ALR.
Effect of Motor Carrier Act Provisions on insurance and indemnity agreements (49 U.S.C.S. §§ 13906, 14102) in allocating losses involving interstate motor carriers. 157 A.L.R. Fed. 549.

§ 77-7-89. Insurance policy or bond shall not be cancelled until notice is given to commission.

The insurance policy or bond filed with the commission as required by this chapter, shall contain a provision or endorsement to the effect that the same shall not be cancelled for any cause by either party thereto unless and until ten (10) days' written notice thereof shall have been given to the commission.

HISTORY:
Codes, 1942, § 7654; Laws, 1938, ch. 142; Laws, 1958, ch. 507; Laws, 1968, ch. 533, § 1, eff from and after passage (approved July 8, 1968).

Cross References —
Cancellation or nonrenewal of automobile insurance policy generally, see § 83-11-1 et seq.

§ 77-7-91. Actions against motor carriers and sureties.

In any action, whether in law or equity, against any motor carrier operating under the provisions of this chapter, whether such carrier is a common carrier, restricted motor carrier, contract carrier or an interstate carrier, the insurer, insurance company or obligor in the policy of insurance or bond given by such carrier in compliance with this chapter shall not be joined as a party to such suit and shall not be a proper party thereto except as hereinafter provided.

The insurer, insurance company or obligor, in any policy of insurance or bond filed in compliance with this chapter, shall be obligated to pay any final judgment obtained against any such carrier as provided in Sections 77-7-83 through 77-7-87, regardless of the solvency, insolvency, bankruptcy or receivership of such carrier.

In the event the insured shall abandon his permit or certificate and leave the state, a claimant asserting a claim within the provisions of said bond or policy may file suit against the sureties executing such bond or company issuing such policy in a court of competent jurisdiction without the necessity of making the insured a party to the said suit.

HISTORY:

Codes, 1942, § 7654; Laws, 1938, ch. 142; Laws, 1958, ch. 507; Laws, 1968, ch. 533, § 1; Laws, 1995, ch. 338, § 6, eff from and after passage (approved March 10, 1995).

§ 77-7-93. Effect of failure to comply with performance bond and insurance requirements.

The failure of any holder of a certificate or permit issued by and under the authority of the commission, to comply with any of the requirements of Section 77-7-83 shall be cause for the revocation or suspension of the certificate or permit, or for the imposition of a fine not exceeding One Thousand Dollars ($1,000.00), or both. Failure of any holder of a certificate or permit issued by and under the authority of the Interstate Commerce Commission, to keep on file with the commission the insurance or other security provided by Section 77-7-87, shall be cause for prohibition of the use by the certificate or permit holder of any highway in this state, and shall be cause for the imposition of a fine not to exceed One Thousand Dollars ($1,000.00).

HISTORY:

Codes, 1942, § 7655; Laws, 1938, ch. 142; Laws, 1968, ch. 534; Laws, 1987, ch. 309, § 7; Laws, 1993, ch 561, § 12, eff from and after October 1, 1993.

INSPECTION FEES; IDENTIFICATION PLATES; IDENTIFICATION TRIP PERMITS

Sec.	
77-7-111.	Repealed.
77-7-113.	Repealed.
77-7-115.	When and to whom inspection fees are to be paid.
77-7-117.	State to have lien on vehicles for payment of inspection fees.
77-7-119.	Registration receipts; fees; promulgation of rules and regulations by commission.
77-7-121.	Repealed.
77-7-123.	Repealed.
77-7-125.	Commission has sole authority to issue registration receipts.
77-7-127.	Disposition of funds collected by commission under this chapter; funding of agency expenses; deposit of monies into State General Fund.

§ 77-7-111. Repealed.

Repealed by Laws, 1991, ch. 405, § 2, eff from and after passage (approved March 20, 1991).

[Codes, 1942, § 7677; Laws, 1938, ch. 142; 1942, ch. 272; 1946, ch. 352, § 1; 1948, ch. 327, § 1; 1960, ch. 406, § 2; 1980, ch. 420]

Editor's Notes —
Former § 77-7-111 provided for inspection fees for holders of certain motor carrier permits.

§ 77-7-113. Repealed.

Repealed by Laws, 1993, ch. 561, § 23, eff from and after October 1, 1993.

[Codes, 1942, § 7677-03; Laws, 1948, ch. 327, § 4]

Editor's Notes —
Former § 77-7-113 exempted certain vehicles from payment of inspection fees.

§ 77-7-115. When and to whom inspection fees are to be paid.

On or before January 1 of each year, or prior to commencement of business, every holder of a certificate of convenience and necessity or permit or interstate authority issued by the U.S. Department of Transportation upon whom the fee is levied by Section 77-7-119, shall pay to the commission of this state an amount equal to the fees imposed in the section for each vehicle operated within this state.

HISTORY:
Codes, 1942, § 7677-01; Laws, 1948, ch. 327, § 2; Laws, 1977, ch. 368; Laws, 1980, ch. 510; Laws, 1993, ch 561, § 13, eff from and after October 1, 1993; Laws, 2018, ch. 332, § 6, eff from and after passage (approved March 8, 2018).

Amendment Notes —
The 2018 amendment, effective March 8, 2018, substituted "U.S. Department of Transportation" for "Interstate Commerce Commission" and deleted "Public Service" preceding "commission".

§ 77-7-117. State to have lien on vehicles for payment of inspection fees.

A lien shall exist upon all property of any motor carrier subject to this chapter, who uses the highways of this state, and upon which fees shall be properly payable, for the payment of fees imposed by Section 77-7-119, together with all penalties accruing under this chapter. The lien shall be paramount to all other liens, except federal, state, county and municipal taxes.

HISTORY:
Codes, 1942, § 7677-02; Laws, 1948, ch. 327, § 3; Laws, 1993, ch 561, § 14, eff from and after October 1, 1993.

§ 77-7-119. Registration receipts; fees; promulgation of rules and regulations by commission.

(1) It shall be unlawful for any holder of a certificate of public convenience and necessity or permit, issued in accordance with this chapter, to operate over

the highways of this state unless there shall be accompanying each vehicle so operated a receipt which shall have been procured from the commission as herein required. The receipts shall bear necessary numbers and identification markings which, in the opinion of the commission, are necessary to carry out the provisions of this section. The receipts required hereby shall be obtained by each operator liable therefor for each vehicle used in the conduct of his business in this state. The commission shall collect a fee of Ten Dollars ($10.00) for each receipt issued by the commission, and the Ten Dollar ($10.00) fee shall not be prorated monthly.

(2) It shall be unlawful for any holder of authority from the U.S. Department of Transportation to operate over the highways of this state unless such carrier has paid a fee of Ten Dollars ($10.00) for each vehicle operated in or through the State of Mississippi pursuant to the U.S. Department of Transportation's single-state insurance registration.

(3) The commission is authorized to promulgate all rules and regulations necessary to enable this state to participate in the single-state insurance registration system for motor carriers authorized by Section 4005 of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. No. 102-240, 105 Stat. 1914 (1991), codified at 49 U.S.C.A. Section 11506 (West Supp. 1992), and by applicable rules and regulations of the U.S. Department of Transportation and any amendments thereto.

HISTORY:
Codes, 1942, § 7673; Laws, 1938, ch. 142; Laws, 1948, ch. 327, § 5; Laws, 1960, ch. 406, § 1; Laws, 1991, ch. 405, § 1; Laws, 1993, ch 561, § 15, eff from and after October 1, 1993; 2018, ch. 332, § 7, eff from and after passage (approved March 8, 2018).

Amendment Notes —
The 2018 amendment, effective March 8, 2018, deleted "Public Service" preceding "commission" three times in (1) and once in (3); substituted "U.S. Department of Transportation" for "Interstate Commerce Commission" twice in (2) and once in (3); and made minor stylistic changes.

Cross References —
Municipal registration of motor vehicles for hire, see § 21-27-139.

§ 77-7-121. Repealed.

Repealed by Laws, 1987, ch 309, § 8, eff from and after July 1, 1987.

[Codes, 1942, § 7673; Laws, 1938, ch. 142; 1948, ch. 327, § 5; 1960, ch. 406, § 1]

Editor's Notes —
Former § 77-7-121 pertained to the issuance of identification trip permits.

§ 77-7-123. Repealed.

Repealed by Laws, 1993, ch. 561, § 26, eff from and after October 1, 1993.

[Codes, 1942, § 7673-01; Laws, 1948, ch. 327, § 6]

Editor's Notes —
Former § 77-7-123 provided for substitute, replacement, interchanged, and destroyed identification plates.

§ 77-7-125. Commission has sole authority to issue registration receipts.

The commission shall have the sole and complete power and authority to issue registration receipts to owners and operators required to have the receipts.

HISTORY:

Codes, 1942, § 7673-02; Laws, 1948, ch. 327, § 9; Laws, 1987, ch. 309, § 9; Laws, 1993, ch 561, § 16, eff from and after October 1, 1993; Laws, 2018, ch. 332, § 8, eff from and after passage (approved March 8, 2018).

Amendment Notes —

The 2018 amendment, effective March 8, 2018, deleted "Public Service" preceding "commission."

§ 77-7-127. Disposition of funds collected by commission under this chapter; funding of agency expenses; deposit of monies into State General Fund.

All funds collected by the commission under the provisions of this chapter shall be deposited in the State Treasury to the credit of the commission's regulation fund for use by the commission for the administration and enforcement of the laws of this state relative to the inspection, control and supervision of the business, equipment, service or accounts of motor carriers subject to this chapter.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Codes, 1942, § 7694-01; Laws, 1948, ch. 327, § 7; Laws, 1952, ch. 330, § 7; Laws, 1987, ch. 309, § 10; Laws, 1987, ch. 343, § 8; Laws, 1993, ch 561, § 17; Laws, 2016, ch. 459, § 58, eff from and after July 1, 2016; Laws, 2018, ch. 332, § 9, eff from and after passage (approved March 8, 2018).

Editor's Notes —

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes —

The 2018 amendment, effective March 8, 2018, in the first paragraph, deleted "Public Service" preceding "commission" three times, and substituted "commission's regulation fund" for "commission regulation fund" in the first paragraph.

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

GENERAL DUTIES OF COMMON AND RESTRICTED COMMON CARRIERS

Sec.	
77-7-151.	Duties of common carriers of household goods by motor vehicle as to service and rates.
77-7-153.	Discrimination by common carriers prohibited.

§ 77-7-151. Duties of common carriers of household goods by motor vehicle as to service and rates.

It shall be the duty of every common carrier of household goods by motor vehicle to provide safe and adequate service, equipment and facilities for the transportation of household goods.

HISTORY:

Codes, 1942, § 7657; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 7; Laws, 2004, ch. 501, § 2, eff from and after July 1, 2004.

JUDICIAL DECISIONS

1. In general.

Mississippi motor carrier regulations contain provisions very similar to federal statutes and state laws expressly provide that state rules and regulations are to conform as nearly as practicable to those of Interstate Commerce Commission (ICC), therefore ICC standards apply in judging reasonableness of motor common carrier's attempt to retroactively collect higher rates than those negotiated, based on filed tariffs. Orr v. ICC, 912 F.2d 119, 1990 U.S. App. LEXIS 14501 (6th Cir. Tenn. 1990).

RESEARCH REFERENCES

ALR.

Liability of common carrier for personal injury or death of passenger occasioned by inhalation of gases or fumes from exhaust. 99 A.L.R.3d 751.

Am. Jur.

13 Am. Jur. 2d, Carriers §§ 101 et seq., 128 et seq.

5A Am. Jur. Pl & Pr Forms (Rev), Carriers, Forms 241-245 (duty to receive and transport property).

38 Am. Jur. Proof of Facts 2d 677, Carrier's Negligence in Boarding or Alighting of Passenger.

CJS.

13 C.J.S., Carriers §§ 73 et seq.

§ 77-7-153. Discrimination by common carriers prohibited.

It shall be unlawful for any common carrier by motor vehicle, the rates of which are subject to regulation under the provisions of this chapter, to make, give or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality or description of traffic in any respect whatsoever, or to subject any particular persons, port, gateway, locality or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever. However, this section shall not be construed to apply to discriminations, prejudice or disadvantage to the traffic of any other carrier of whatever description.

HISTORY:

Codes, 1942, § 7659; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 8; Laws, 2004, ch. 501, § 3, eff from and after July 1, 2004.

RESEARCH REFERENCES

ALR.
When is shipper entitled to charge or allowance under 49 USCS § 10747, regulating charges and allowances for services or facilities furnished by shipper. 50 A.L.R. Fed. 420.

Am. Jur.
13 Am. Jur. 2d, Carriers §§ 159 et seq.

CJS.
13 C.J.S., Carriers §§ 301 et seq., 599, 600.

SERVICE

Sec.
77-7-171. Repealed.
77-7-173. Changes in schedules by common carriers.
77-7-175. Operation of special or chartered parties by common carriers.
77-7-177. Deviations from routes by common carriers.
77-7-179. Repealed.
77-7-181. Accident reports.
77-7-183. Repealed.
77-7-185. Commission may require establishment of passenger stations.
77-7-187. Establishment of through routes and joint rates by common carriers.

§ 77-7-171. Repealed.

Repealed by Laws, 1993, ch. 561, § 24, eff from and after October 1, 1993. [Codes, 1942, § 7670; Laws, 1938, ch. 142]

Editor's Notes —
Former § 77-7-171 regulated free transportation by common carriers.

§ 77-7-173. Changes in schedules by common carriers.

Common carriers by motor vehicle, the rates of which are subject to regulation under the provisions of this chapter, shall, before making a change in their schedules, give proper notice to the commission of such proposed change. The operation under such changed schedule shall thereafter be lawful unless otherwise ordered by the commission upon objection of an interested party or the commission itself.

HISTORY:
Codes, 1942, § 7646; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 9; Laws, 2004, ch. 501, § 4, eff from and after July 1, 2004.

§ 77-7-175. Operation of special or chartered parties by common carriers.

Any common carrier by motor vehicle transporting passengers under a certificate issued by the commission may operate to any place special or chartered parties under such reasonable rules and regulations as the commission may prescribe.

HISTORY:
Codes, 1942, § 7645; Laws, 1938, ch. 142.

§ 77-7-177. Deviations from routes by common carriers.

A common carrier by motor vehicle, operating under a certificate issued by the commission, may occasionally deviate from the route over which it is authorized to operate under the certificate, under such general or special rules and regulations as the commission may prescribe.

HISTORY:
Codes, 1942, § 7643; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 10, eff from and after passage (approved March 10, 1995).

RESEARCH REFERENCES

Am. Jur.
13 Am. Jur. 2d, Carriers §§ 307 et seq.

§ 77-7-179. Repealed.

Repealed by Laws, 1995, ch. 338, § 22, eff from and after passage (approved March 10, 1995).

[Codes, 1942, § 7644; Laws, 1938, ch. 142; 1958, ch. 508]

Editor's Notes —
Former § 77-7-179 authorized transportation of baggage, newspapers, express parcels and mail by common carriers transporting passengers.

§ 77-7-181. Accident reports.

It shall be the duty of the manager, agent or other proper officer of every motor carrier doing business or operating in this state to present to the commission such report or reports as may be required by it, under oath, of all accidents resulting in injury to persons, equipment, highway or property of any kind, under such rules and regulations as may be prescribed by the commission.

HISTORY:
Codes, 1942, § 7671; Laws, 1938, ch. 142.

Cross References —
Reports of motor vehicle accidents generally, see § 63-3-401 et seq.

Reports of railroad accidents, see § 77-9-431.

§ 77-7-183. Repealed.

Repealed by Laws, 1993, ch. 561, § 25, eff from and after October 1, 1993.

[Codes, 1942, § 7672; Laws, 1938, ch. 142]

Editor's Notes —
Former § 77-7-183 involved common carriers' regulation of sanitary conditions in public facilities.

§ 77-7-185. Commission may require establishment of passenger stations.

After notice and hearing, and an opportunity to be heard by the carrier or carriers affected, the commission may require the establishment of passenger stations at cities and towns where such establishment is shown to be justified by the reasonable public needs. The commission shall give due consideration to the volume of traffic handled by the carrier or carriers to be affected, to and from the city or town where a station is proposed to be located, and the amount of revenue derived therefrom and the cost and expense of establishing and maintaining such station and the effect which the establishment of such station and the maintenance thereof will have upon the ability of the affected carrier or carriers to continue to perform their public service.

HISTORY:

Codes, 1942, § 7672; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 11, eff from and after passage (approved March 10, 1995).

Cross References —

Public Service Commission, see §§ 77-1-1 et seq.

§ 77-7-187. Establishment of through routes and joint rates by common carriers.

(1) Common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates with other such common carriers, and shall provide safe and adequate service, equipment and facilities for the transportation of passengers, and shall establish, observe and enforce just and reasonable regulations and practices relating thereto, and to the issuance, form and substance of tickets, the carrying of personal, sample and excess baggage, and the facilities for transportation of passengers. In case of joint rates, fares and charges, it shall be the duty of the carriers party thereto to establish just, reasonable and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(2) Common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares or charges with common carriers by railroad or water. In case of such joint rates, fares or charges, it shall be the duty of the carriers party thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

HISTORY:

Codes, 1942, §§ 7656, 7658; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 12; Laws, 2004, ch. 501, § 5, eff from and after July 1, 2004.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of regulations respecting type or condition of automobile used in transportation of passengers for hire. 7 A.L.R.2d 1266.

Car pool or "share-the-expense" arrangement as subjecting vehicle operator to regulations applicable to carriers. 51 A.L.R.2d 1193.

Am. Jur.

14 Am. Jur. 2d, Carriers §§ 627 et seq.

4A Am. Jur. Legal Forms 2d, Carriers §§ 53:83-53:86 (contracts between connecting carriers).

RATES OF COMMON CARRIERS

Sec.
77-7-211. Filing, publication and posting of rates of common carriers; rejection of tariff by commission.
77-7-213. Common carriers shall charge only rates set forth in tariff.
77-7-215. Change in rates by common carriers; notice to be given.
77-7-217. Commission hearings upon reasonableness of rates of common carriers.
77-7-219. Suspension of rates proposed by common carriers.
77-7-221. Factors to be considered by commission in considering rates of common carriers.
77-7-223. Other rights and remedies unaffected by foregoing.

§ 77-7-211. Filing, publication and posting of rates of common carriers; rejection of tariff by commission.

Every common carrier of passengers shall file with the commission, and print and keep open for public inspection, tariffs showing all the rates, fares and charges for transportation, and all services in connection therewith, between points on its own route, and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad, express or water, when a through route and joint rate has been established. Such rates, fares and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed and posted in such form and manner, and shall contain such information as the commission by regulation shall prescribe. The commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

No common carrier of passengers, unless otherwise provided by this chapter, shall engage in the transportation of passengers unless the rates, fares and charges upon which the same are transported by the carrier have been filed and published in accordance with the provisions of this chapter.

HISTORY:
Codes, 1942, § 7666; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 13; Laws, 2004, ch. 501, § 6, eff from and after July 1, 2004.

JUDICIAL DECISIONS

1. In general.

Collective rate making activities of "rate bureaus" composed of motor common carriers operating in North Carolina, Georgia, Tennessee and Mississippi, whereby bureaus, on behalf of members, submit joint rate proposals to the public service commissions in each state for approval or rejection, are immune from federal antitrust liability where such activities, though not compelled by the states, are taken pursuant to clearly articulated policy of each state, which actively supervises, through state agency, rate bureaus' activities. Southern Motor Carriers Rate Conference v. United States, 471 U.S. 48, 105 S. Ct. 1721, 85 L. Ed. 2d 36, 1985 U.S. LEXIS 196 (U.S. 1985).

Where motor bus carrier's tariff of rates limited liability for baggage to $25, in absence of declaration of value in excess of such amount and payment of extra compensation, carrier was not liable for passenger's expenses in searching for his baggage which was lost after having been checked with carrier. Campbell v. Tri-State Transit Co., 196 Miss. 367, 17 So. 2d 327, 1944 Miss. LEXIS 202 (Miss. 1944).

Following decision in Boston & M. Railroad v. Hooker (1914) 233 U.S. 97, 58 L. Ed. 868, 34 S. Ct. 526, in accordance with rule that regulations, etc. adopted by public service commission should conform to such regulations, etc. promulgated by Interstate Commerce Commission, tariff of rates, filed as provided by this section [Code 1942, § 7666] by motor bus carrier, allowing passengers to check baggage not exceeding $25 in value without additional charge but providing that value in excess thereof should be declared and additional compensation paid, limited carrier's liability for loss of passenger's baggage to $25, where passenger did not declare value thereof, notwithstanding that passenger had no knowledge of such tariff provisions and had no conversation with carrier's agent on the subject. Campbell v. Tri-State Transit Co., 196 Miss. 367, 17 So. 2d 327, 1944 Miss. LEXIS 202 (Miss. 1944).

RESEARCH REFERENCES

CJS.

13 C.J.S., Carriers §§ 129 et seq.

§ 77-7-213. Common carriers shall charge only rates set forth in tariff.

No common carrier by motor vehicle, the rates of which are subject to regulation under the provisions of this chapter, shall charge, demand, collect or receive a greater, less or different compensation for transportation or for any service in connection therewith between the points enumerated in its tariff than the rates, fares and charges specified in the tariffs in effect at the time. No such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent, or otherwise, any portion of the rates, fares or charges so specified, or extend to any person any privileges or facilities for transportation except such as are specified in its tariffs.

HISTORY:

Codes, 1942, § 7666; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 14; Laws, 2004, ch. 501, § 7, eff from and after July 1, 2004.

JUDICIAL DECISIONS

1. In general.

Mississippi motor carrier regulations contain provisions very similar to federal statutes and state laws expressly provide that state rules and regulations are to conform as nearly as practicable to those of Interstate Commerce Commission (ICC), therefore ICC standards apply in judging reasonableness of motor common carrier's attempt to retroactively collect higher rates than those negotiated, based on filed tariffs. Orr v. ICC, 912 F.2d 119, 1990 U.S. App. LEXIS 14501 (6th Cir. Tenn. 1990).

RESEARCH REFERENCES

Am. Jur.

13 Am. Jur. 2d, Carriers §§ 102 et seq.

4A Am. Jur. Legal Forms 2d, Carriers § 53:65 (claim for overcharge).

5A Am. Jur. Pl & Pr Forms (Rev), Carriers, Form 151 (complaint, petition, or declaration alleging passenger charged excessive fare).

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 132 (complaint, petition, or declaration against common carrier to recover excessive transportation charge).

§ 77-7-215. Change in rates by common carriers; notice to be given.

No change shall be made in any rate, fare, charge or classification, or any rule, regulation or practice affecting such rate, fare, charge or classification, or the value of the service thereunder, specified in any elective tariff of a common carrier by motor vehicle, except after thirty (30) days' notice of the proposed change, and upon thirty (30) days' notice to all interested carriers, to be given by the carrier proposing such change, filed and posted in accordance with Section 77-7-211. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The commission may, in its discretion and for good cause shown, allow such change upon notice less than that herein specified, or modify the requirements of this section with respect to posting and filing of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

HISTORY:

Codes, 1942, § 7666; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 15, eff from and after passage (approved March 10, 1995).

JUDICIAL DECISIONS

1. In general.

Collective rate making activities of "rate bureaus" composed of motor common carriers operating in North Carolina, Georgia, Tennessee and Mississippi, whereby bureaus, on behalf of members, submit joint rate proposals to the public service commissions in each state for approval or rejection, are immune from federal antitrust liability where such activities, though not compelled by the states, are taken pursuant to clearly articulated policy of each state, which actively supervises, through state agency, rate bureaus' activities. Southern Motor Carriers Rate Conference v. United States, 471 U.S. 48, 105 S. Ct. 1721, 85 L. Ed. 2d 36, 1985 U.S. LEXIS 196 (U.S. 1985).

RESEARCH REFERENCES

Am. Jur.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 45 (petition or application for rehearing on application of transit company to fix fare rates).

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 53 (order reopening proceeding and setting time and place for hearing petition of transit company to fix fare rates).

§ 77-7-217. Commission hearings upon reasonableness of rates of common carriers.

Any person, state board, organization or body politic may make complaint in writing to the commission that any such rate, fare, charge, classification, rule, regulation or practice in effect, or proposed to be put into effect, is or will be in violation of Sections 77-7-153, 77-7-187, 77-7-211 through 77-7-215. The provisions of this section shall not apply to common carriers of household goods.

Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission is of the opinion that any individual or joint rate, fare or charge, demanded, charged or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad or express, or water, or any classification, rule, regulation or practice whatsoever of such carrier or carriers affecting such rate, fare or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare or charge thereunder to be observed, or the lawful classification, rule, regulation or practice thereafter to be made effective.

The commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes, and joint rates, fares, charges, regulations or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, to be charged, and the terms and conditions under which the through routes shall be operated.

Whenever, after hearing, upon complaint or upon its own initiative, the commission is of opinion that the divisions of joint rates, fares or charges, applicable to the transportation of passengers by common carriers by motor vehicle or by such carriers in conjunction with common carriers by railroad or express, or water are, or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the commission shall by order prescribe the just, reasonable and equitable divisions thereof to be received by the several carriers. In cases where the joint rate, fare or charge was established pursuant to a finding or order of the commission and the divisions thereof are found by it to have been unjust, unreasonable or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what would have been the just, reasonable and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance with the order, from the date of filing the complaint or entry of order of investigation or such other date subsequent as the commission finds justified and, in the case of joint rates prescribed by the commission, the order as to divisions may be made effective as a part of the original order.

HISTORY:

Codes, 1942, §§ 7660, 7661; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 16; Laws, 2004, ch. 501, § 8, eff from and after July 1, 2004.

JUDICIAL DECISIONS

1. In general.

Mississippi motor carrier regulations contain provisions very similar to federal statutes and state laws expressly provide that state rules and regulations are to conform as nearly as practicable to those of Interstate Commerce Commission (ICC), therefore ICC standards apply in judging reasonableness of motor common carrier's attempt to retroactively collect higher rates than those negotiated, based on filed tariffs. Orr v. ICC, 912 F.2d 119, 1990 U.S. App. LEXIS 14501 (6th Cir. Tenn. 1990).

Collective rate making activities of "rate bureaus" composed of motor common carriers operating in North Carolina, Georgia, Tennessee and Mississippi, whereby bureaus, on behalf of members, submit joint rate proposals to the public service commissions in each state for approval or rejection, are immune from federal antitrust liability where such activities, though not compelled by the states, are taken pursuant to clearly articulated policy of each state, which actively supervises, through state agency, rate bureaus' activities. Southern Motor Carriers Rate Conference v. United States, 471 U.S. 48, 105 S. Ct. 1721, 85 L. Ed. 2d 36, 1985 U.S. LEXIS 196 (U.S. 1985).

RESEARCH REFERENCES

Am. Jur.

20A Am. Jur. Pl & Pr Forms, Public Utilities and Services, Form 45 (petition or application on application of transit company to fix fare rates).

CJS.

13 C.J.S., Carriers §§ 213 et seq.

§ 77-7-219. Suspension of rates proposed by common carriers.

Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, charge or classification for the transportation of passengers by a common carrier or carriers by motor vehicle, or by any such carrier or carriers in conjunction with a common carrier or carriers by railroad, express or water, or any rule, regulation or practice affecting such rate, fare or charge, or the value of the service thereunder, the commission is hereby authorized and empowered, upon complaint of any interested party or upon its own initiative, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare or charge, or such rule, regulation or practice, and pending such hearing and the decision thereon the commission, by filing with such schedule and delivering to the carrier or carriers affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, fare or charge, or such rule, regulation or practice, for a period of ninety (90) days. If the proceeding has not been concluded and a final order made within such period, the commission may, from time to time, extend the period of suspension by order, but not for a longer period in the aggregate than one hundred eighty (180) days beyond the time when it would otherwise go into effect. After hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare or charge, or classification, rule, regulation or practice shall go into effect at the end of such period.

HISTORY:

Codes, 1942, § 7662; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 17; Laws, 2004, ch. 501, § 9, eff from and after July 1, 2004.

§ 77-7-221. Factors to be considered by commission in considering rates of common carriers.

In the exercise of its power to prescribe just and reasonable rates for the transportation of passengers by common carriers by motor vehicle, the commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by such carriers; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such services; and to the need of revenues sufficient to enable such carriers, under honest, economical and efficient management, to provide such service.

In any proceeding to determine the justness or reasonableness of any rate, fare or charge of any such carrier, there shall not be taken into consideration or allowed as evidence or elements of value of the property of such carrier, either goodwill, earning power, or the certificate under which such carrier is operating. In applying for and receiving a certificate under this chapter, any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of all transferees or lessees of such certificate.

HISTORY:
Codes, 1942, §§ 7663, 7664; Laws, 1938, ch. 142; Laws, 1995, ch. 338, § 18; Laws, 2004, ch. 501, § 10, eff from and after July 1, 2004.

JUDICIAL DECISIONS

1. In general.
Mississippi motor carrier regulations contain provisions very similar to federal statutes and state laws expressly provide that state rules and regulations are to conform as nearly as practicable to those of Interstate Commerce Commission (ICC), therefore ICC standards apply in judging reasonableness of motor common carrier's attempt to retroactively collect higher rates than those negotiated, based on filed tariffs. Orr v. ICC, 912 F.2d 119, 1990 U.S. App. LEXIS 14501 (6th Cir. Tenn. 1990).

RESEARCH REFERENCES

CJS.
13 C.J.S., Carriers §§ 213 et seq.

§ 77-7-223. Other rights and remedies unaffected by foregoing.

Nothing in Sections 77-7-151, 77-7-153, 77-7-187, 77-7-217 to 77-7-221, shall be held to extinguish any remedy or right of action not inconsistent therewith.

HISTORY:
Codes, 1942, § 7665; Laws, 1938, ch. 142.

MINIMUM CHARGES OF CONTRACT CARRIERS

Sec.
77-7-241. Minimum charges of contract carriers to be filed with commission; reductions.
77-7-243. Commission hearings upon reasonableness of rates of contract carriers.
77-7-245. Suspension of charges proposed by contract carriers.

§ 77-7-241. Minimum charges of contract carriers to be filed with commission; reductions.

It shall be the duty of every contract carrier by motor vehicle to file with the commission, publish, and keep open for public inspection, in the form and manner prescribed by the commission, schedules, or in the discretion of the commission, copies of contracts containing the minimum charges of such carrier for the transportation of passengers in intrastate commerce, and any rule, regulation, or practice affecting such charges and the value of the service thereunder. No such contract carrier, unless otherwise provided by this chapter, shall engage in the transportation of passengers in intrastate commerce unless the minimum charges for such transportation by the carrier have been published, filed and posted in accordance with the provisions of this chapter.

No reduction shall be made in any such charge, either directly or by means of any change in any rule, regulation or practice affecting such charge or the value of service thereunder, except after thirty (30) days' notice of the proposed change filed in the aforesaid form and manner. However, the commission may, in its discretion and for good cause shown, allow such change upon less notice, or modify the requirements of this section with respect to posting and filing of such schedules or copies of contracts, either in particular instances, or by general order applicable to special or peculiar circumstances or conditions. Such notice shall plainly state the change proposed to be made and the time when such change will take effect.

No such carrier shall demand, charge or collect a less compensation for such transportation than the charges filed in accordance with this section, as affected by any rule, regulation or practice so filed, or as may be prescribed by the commission from time to time, and it shall be unlawful for any such carrier, by the furnishing of special services, facilities, or privileges, or by any other device whatsoever, to charge, accept or receive less than the minimum charges so filed or prescribed. Any such carrier or carriers or any class or group thereof, may apply to the commission for relief from the provisions of this section, and the commission may, after hearing, grant the relief to such extent and for such time, and in such manner as in its judgment is consistent with the public interest and the policy declared in Section 77-7-3.

HISTORY:
Codes, 1942, § 7667; Laws, 1938, ch. 142; Laws, 2004, ch. 501, § 11, eff from and after July 1, 2004.

§ 77-7-243. Commission hearings upon reasonableness of rates of contract carriers.

Whenever, after hearing upon complaint or its own initiative, the commission finds that any charge of any contract carrier or carriers by motor vehicle, or any rule, regulation or practice of any such carrier or carriers affecting such charge, or the value of the service thereunder, for the transportation of passengers in intrastate commerce, contravenes the policy declared in Section 77-7-3, the commission may prescribe such minimum charge, or such rule, regulation or practice as in its judgment may be necessary or desirable in the public interest and to promote the policy declared in said section. Such minimum charge, or such rule, regulation or practice so prescribed by the commission, shall give no advantage or preference to any such carrier in competition with any common carrier by motor vehicle subject to this chapter, which the commission may find to be undue or inconsistent with the public interest and the policy declared in said section. The commission shall give due consideration to the cost of the services rendered by such carriers and to the effect of such minimum charge, or such rules, regulations or practices upon the movement of traffic by such carriers. All complaints shall state fully the facts complained of and the reasons for such complaint and shall be made under oath.

HISTORY:
Codes, 1942, § 7667; Laws, 1938, ch. 142; Laws, 2004, ch. 501, § 12, eff from and after July 1, 2004.

RESEARCH REFERENCES

Am. Jur.
20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 45 (petition or application for rehearing on application of transit company to fix fare rates).
20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 53 (order reopening proceeding and setting time and place for hearing petition of transit company to fix fare rates).

CJS.
13 C.J.S., Carriers §§ 213 et seq.

§ 77-7-245. Suspension of charges proposed by contract carriers.

Whenever there shall be filed with the commission by any contract carrier any schedule or contract stating a reduced charge directly, or by means of any rule, regulation or practice, for the transportation of passengers in intrastate commerce, the commission is hereby authorized and empowered, upon complaint of interested parties or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested party, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such charge, or such rule, regulation or practice, and pending such hearing and the decision thereon the commission, by filing with such schedule or contract and delivering to the carrier affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such schedule or contract and defer the use of such charge, or such rule, regulation or practice, for a period of ninety (90) days. If the proceeding has not been concluded and a final order made within such period, the commission may, from time to time, extend the period of suspension, but not for a longer period in the aggregate than one hundred eighty (180) days beyond the time when it would otherwise go into effect. After hearing, whether completed before or after the charge, or rule, regulation or practice goes into effect, the commission may make such order with reference thereto as would be proper in proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change in any charge or rule, regulation or practice shall go into effect at the end of such period. The carrier may voluntarily suspend such schedule, rule, regulation or practice for further periods beyond the one hundred eighty (180) days and until the proceeding be concluded.

HISTORY:
Codes, 1942, § 7668; Laws, 1938, ch. 142; Laws, 2004, ch. 501, § 13, eff from and after July 1, 2004.

MISCELLANEOUS REGULATIONS

Sec.
77-7-261. Reports of carriers; accounts, books and memoranda; inspections.
77-7-263. Failure to make proper reports or to keep accounts, records and memoranda properly is a misdemeanor.
77-7-265 through 77-7-269. Repealed.

§ 77-7-261. Reports of carriers; accounts, books and memoranda; inspections.

The commission is hereby authorized to require annual, periodical, or special reports from all motor carriers except those exempted in this chapter, to prescribe the manner and form in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the commission may deem information to be necessary. Such reports shall be under oath whenever the commission so requires. The commission may also require any motor carrier to file with it a copy of each or any contract, agreement, or arrangement between such carrier and any other carrier or person in relation to any traffic affected by the provisions of this chapter.

The commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda, including those of the movement of traffic as well as of the receipts and expenditures of money, to be kept by common carriers and restricted common carriers by motor vehicle and the length of time such accounts, records and memoranda shall be preserved. The commission or its employees shall at all reasonable times have access to all lands, buildings, or equipment of motor carriers used in connection with their operations and also all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept, by motor carriers. The commission and its employees shall have authority to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing and kept or required to be kept by such carriers. This section shall apply to receivers of carriers, to operating trustees, and to the extent deemed necessary by the commission, to persons affiliated with or having control, direct or indirect, over any motor carrier.

HISTORY:
Codes, 1942, § 7675; Laws, 1938, ch. 142.

Cross References —
Applicability of record provisions of Tobacco Tax Law to carriers, see § 27-69-39.

Duty of transporter of light wines or beer to furnish state tax commissioner duplicate bills of lading, see § 67-3-61.

Duty of carriers to file record of transported alcohol and wine with circuit court clerk, see § 99-27-31.

RESEARCH REFERENCES

Am. Jur.
13 Am. Jur. 2d, Carriers § 27.

§ 77-7-263. Failure to make proper reports or to keep accounts, records and memoranda properly is a misdemeanor.

Any motor carrier, or any officer, agent, employee, or representative thereof, who shall wilfully fail and refuse to make a report to the commission as required by this chapter, or to keep accounts, records, and memoranda in the form and manner approved or prescribed by the commission, or who shall knowingly and wilfully, falsify, destroy, mutilate, or alter any such report, account, record, or memoranda, or who shall knowingly or wilfully file any false report, account, record, or memoranda, shall be deemed guilty of a misdemeanor and upon conviction thereof be subject for each offense to a fine of not less than one hundred ($100.00) dollars and not more than five thousand ($5,000.00) dollars.

HISTORY:
Codes, 1942, § 7681; Laws, 1938, ch. 142.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§§ 77-7-265 through 77-7-269. Repealed.

Repealed by Laws, 1995, ch. 338, §§ 23-25, eff from and after passage (approved March 10, 1995).

§ 77-7-265. [Codes, 1942, § 7680; Laws, 1938, ch. 142]
§ 77-7-267. [Codes, 1942, § 7682; Laws, 1938, ch. 142]
§ 77-7-269. [Codes, 1942, § 7666.1; Laws, 1962, ch. 511, §§ 1-3]

Editor's Notes —
Former § 77-7-265 provided for confidentiality of information concerning transportation of property.

Former § 77-7-267 related to release of freight by carrier prior to payment of charges and liability for transportation charges.

Former § 77-7-269 related to the validity of agreements requiring additional payment for transportation of motor vehicles or parts under certain circumstances.

COMMISSION HEARINGS AND REHEARINGS; APPEAL OF ORDER OF COMMISSION

Sec.
77-7-291. Conduct of commission hearings.
77-7-293. Rehearings of orders or decisions of commission.
77-7-295. Appeal of final finding, order or judgment of commission.

§ 77-7-291. Conduct of commission hearings.

Any matter arising in the administration of this chapter requiring a hearing shall be heard and decided by the commission, or shall, by order of the commission, be referred to a member or employee of the commission for hearing and the recommendation of an appropriate order thereon. With respect to such matters, the member or employee shall have all the rights, duties, powers and jurisdiction conferred by this chapter upon the commission, except that the order recommended by such member or employee shall be subject to the following provisions of this section. Any order recommended by the member or employee with respect to such matter shall be in writing and be accompanied by the reasons therefor, and shall be filed with the commission. Copies of such recommended order shall be served upon the interested parties, who may file exceptions thereto; if no exceptions are filed within twenty (20) days after service upon such persons, or within such further period as the commission may authorize, such recommended order shall become the order of the commission and become effective, unless within such period the order is stayed or postponed by the commission. Where exceptions are filed as herein provided it shall be the duty of the commission to consider the same and, if sufficient reason appears therefor, the commission shall grant such review or make such orders or hold or authorize such further hearings or proceedings in the premises as may be necessary or proper to carry out the purposes of this chapter. The commission may, on its own motion, review any such matter and take action thereon as if exceptions thereto had been filed. The commission, after review upon the same record or as supplemented by a further hearing, shall decide the matter and make appropriate order thereon.

HISTORY:
Codes, 1942, § 7678; Laws, 1938, ch. 142.

Cross References —
Rehearing of order or decision of commission, see § 77-7-293.

Appeal of final finding, order or judgment of commission, see § 77-7-295.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities §§ 176 et seq.

§ 77-7-293. Rehearings of orders or decisions of commission.

After an order or decision has been made by the commission, any party to the proceedings may, within thirty (30) days after the entry of the order or decision, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing, and the commission may grant and hold such rehearings on such matters.

The commission shall either grant or refuse an application for rehearing within twenty (20) days after the date of application therefor. A failure by the commission to act upon such application within that period shall be deemed refusal thereof. If the application is granted, the commission shall conduct and conclude a rehearing within thirty (30) days of the entry of the order for rehearing and shall enter a new order after the rehearing shall have been concluded. Such new order shall become effective ten (10) days after it is entered, unless otherwise provided by the commission for reasonable cause.

HISTORY:
Laws, 1992, ch. 356, § 1, eff from and after July 1, 1992.

Cross References —
Appeal of final finding, order or judgment of commission, see § 77-7-295.

RESEARCH REFERENCES

Am. Jur.
64 Am. Jur. 2d, Public Utilities §§ 176 et seq.

§ 77-7-295. Appeal of final finding, order or judgment of commission.

In addition to other remedies now available, the state, or any party aggrieved by any final finding, order or judgment of the commission, shall have the right, regardless of the amount involved, of appeal to the First Judicial District Circuit Court of Hinds County, Mississippi. If an application for rehearing has been filed, an appeal must be filed within thirty (30) days after the application for rehearing has been refused or deemed refused because of the commission's failure to act thereon within the time specified in Section 77-7-293, or if the application is granted, within thirty (30) days after the rendition of the decision on rehearing. If an application for rehearing has not been filed, an appeal must be filed within thirty (30) days after the entry of the commission's order. In those cases wherein an administrative order of the commission is involved, the circuit court may affirm or reverse for further proceedings as justice may require. In those cases wherein the commission's order appealed from is a judicial finding, the circuit court shall review, affirm, reverse or modify the same and enter therein such order or judgment as may be right and just. Without excluding any other finding, order or judgment of the commission as constituting a judicial finding, the granting or denial by the commission of an application for a certificate of public convenience and necessity, or the granting of denial of an application for a permit to operate as a contract carrier, shall be construed as a judicial finding, and appealable as such. All such appeals shall be taken and perfected, heard and determined either in term time or in vacation, on the record, including a transcript of pleadings and testimony, both oral and documentary, filed and heard before the commission; and such appeal shall be heard and disposed of promptly by the court as a preference cause. In perfecting any appeal provided by this section, the provisions of law respecting notice to the reporter and the allowance of bills of exception, now or hereafter in force respecting appeals from circuit courts to the Supreme Court, shall be applicable.

HISTORY:
Laws, 1992, ch. 356, § 2, eff from and after July 1, 1992.

Editor's Notes —
Provisions of this section were formerly found in § 77-1-45.

RESEARCH REFERENCES

ALR.
Adequacy, as regards right to injunction, of other remedy for review of order fixing public utility rates. 8 A.L.R.2d 839.

Am. Jur.
64 Am. Jur. 2d, Public Utilities §§ 176 et seq.
20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Forms 61 et seq. (judicial review).

PENALTIES

Sec.
77-7-311. Penalties.

§ 77-7-311. Penalties.

(1) Any person violating any provisions of this chapter, or any rule, regulation, requirement or order thereunder, or any term or condition of any certificate or permit, for which a penalty is not otherwise provided in this chapter, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not less than Twenty-five Dollars ($25.00) and not more than Five Hundred Dollars ($500.00) for the first offense and not less than Five Hundred Dollars ($500.00) and not more than One Thousand Dollars ($1,000.00) for each subsequent offense. Each day of violation shall constitute a separate offense.

(2) Any person, whether carrier, shipper, consignee, or any officer, employee, agent or representative thereof, who shall knowingly offer, grant or give, or solicit, accept or receive any rebate, concession or discrimination in violation of any provision of this chapter, or who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease or bill of sale, or by any other means or device, shall knowingly and willfully assist, suffer or permit any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare or charge, or who shall knowingly and willfully, by any such means or otherwise, fraudulently seek to evade or defeat regulation as in this chapter provided for motor carriers, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00) for the first offense and not less than Five Hundred Dollars ($500.00) and not more than One Thousand Dollars ($1,000.00) for any subsequent offense.

(3) Any owner, operator or driver of any vehicle, who is required by any law or by any rule or regulation of the commission to stop at any inspection station or submit to an inspection, who willfully fails or refuses to do so, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00), or more than One Thousand Dollars ($1000.00), or by confinement in the county jail for not more than thirty (30) days, or by both fine and jail sentence.

(4) Any individual, corporation or partnership operating a motor vehicle transporting hazardous material that is found to be in violation of any rule, regulation or requirement as provided by Section 77-7-16 shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Two Hundred Dollars ($200.00) or more than Five Hundred Dollars ($500.00) for the first offense, and not less than Five Hundred Dollars ($500.00) and not more than One Thousand Dollars ($1,000.00) for each subsequent offense. Each day of violation shall constitute a separate offense.

(5) Any person operating or attempting to operate a motor vehicle which has been placed out of service by a motor carrier inspector shall be fined One Thousand Dollars ($1,000.00).

HISTORY:

Codes, 1942, §§ 7679, 7692-06; Laws, 1938, ch. 142; Laws, 1958, ch. 505, § 7; Laws, 1960, ch. 406, § 3; Laws, 1988, ch. 544, § 2; Laws, 1993, ch 561, § 18, eff from and after October 1, 1993.

Cross References —

Application of this section to a violation of the provisions pertaining to the supervision and inspection of the safe operation and use of certain motor vehicles, see § 77-7-16.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

State could not, on relation of district attorney, sue to restrain bus companies, having franchise from railroad commission to use highway, from continuing to use state highway, on ground they were wrongfully using highway to extent constituting public nuisance. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

RESEARCH REFERENCES

ALR.

Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation. 78 A.L.R.4th 1127.

ADMINISTRATION AND ENFORCEMENT

Sec.

77-7-331. Duties of enforcement officers.
77-7-333. Training of enforcement officer; funding of agency expenses; deposit of monies into State General Fund.
77-7-335. Authority of enforcement officers.
77-7-337. Purchase of necessary equipment authorized; funding of agency expenses; deposit of monies into State General Fund.
77-7-339. Payment of salaries and expenses shall be from the motor carrier regulation account; funding of agency expenses; deposit of monies into State General Fund.
77-7-341. Cooperation with other agencies authorized.

§ 77-7-331. Duties of enforcement officers.

The chief enforcement officer and the inspectors, employed pursuant to the authority granted in Section 77-1-21, shall be responsible for enforcing and investigating all alleged violations of this chapter, and the rules, regulations and general orders of the commission promulgated thereunder. In the performance of their duties such employees shall give particular attention to the enforcement of the commission's safety rules and regulations; the provisions of this chapter applicable to rates, charges and practices of motor carriers; the provisions prohibiting unlawful preference, concession, rebate, or discrimination; the adequacy of service, equipment and facilities of motor carriers; and the requirements respecting certificate of public convenience and necessity or permits as set forth in this chapter.

HISTORY:
Codes, 1942, § 7692-03; Laws, 1958, ch. 505, § 4, eff July 1, 1958.

§ 77-7-333. Training of enforcement officer; funding of agency expenses; deposit of monies into State General Fund.

After selection, the chief enforcement officer and the inspectors shall go through thirty (30) days of intensive instruction of the laws of this state pertaining to the Mississippi Department of Transportation and the Department of Public Safety, together with rules and regulations of all these departments, and the laws of this state pertaining to arrest. The expenses of attending such school shall be paid out of the commission's regulation fund on presentation of paid bills for travel and subsistence to the secretary of the commission.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:
Codes, 1942, § 7692-02; Laws, 1958, ch. 505, § 3; Laws, 1987, ch. 343, § 9; Laws, 1993, ch 561, § 19; Laws, 2016, ch. 459, § 59, eff from and after July 1, 2016; Laws, 2018, ch. 332, § 10, eff from and after passage (approved March 8, 2018).

Editor's Notes —
Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:
"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.'"

Amendment Notes —
The 2018 amendment, effective March 8, 2018, in the first paragraph, deleted "Public Service Commission, the" preceding "Mississippi Department of Transportation" and substituted "paid out of the commission's regulation fund on" for "paid out of the 'Public Service Commission Regulation Fund' on."

Cross References —
Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.
Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

§ 77-7-335. Authority of enforcement officers.

(1) All inspectors on duty shall wear uniforms, shall have the right to bear arms, and shall have the authority to make arrests and hold and impound any vehicle and the contents thereof which is being operated in violation of this chapter or the commission's rules, regulations or general orders promulgated thereunder.

(2) All inspectors shall have the authority to enforce all of the laws, rules and regulations of the commission upon all highways in the state and the rights-of-way of such highways and other properties as defined in Section 77-7-261; except that if any person commits an offense in violation of this chapter or the rules and regulations of this commission upon a highway in the

state and be pursued by a member or inspector of the commission, such member may pursue and apprehend such offender upon any of the highways in this state, or to any other place to which such offender may flee.

(3) All inspectors shall have the authority to aid and assist any law enforcement officer whose life or safety is in jeopardy and may arrest without warrant any fugitive from justice who has escaped or who is using the highways in the state in an attempt to flee. With the approval of the commission or its designee, inspectors of the commission may assist other law enforcement agencies in searching for convicted felons who have escaped or for alleged felons where there is probable cause to believe that the person being sought committed the felony and a felony had actually been committed.

(4) Upon request of the Mississippi Highway Patrol, a sheriff of any county or the chief of police of any community and with the consent of the commission, all inspectors have the authority to assist in traffic control during time of natural disasters, such as hurricanes, tornados or floods.

(5) Nothing in this section shall be construed as granting the commission general police powers.

HISTORY:

Codes, 1942, § 7692-04; Laws, 1958, ch. 505, § 5; Laws, 1993, ch 561, § 20, eff from and after October 1, 1993; Laws, 2018, ch. 332, § 11, eff from and after passage (approved March 8, 2018).

Amendment Notes —

The 2018 amendment, effective March 8, 2018, deleted "Public Service" preceding "commission" twice in (2), once in (3) and once in (5).

§ 77-7-337. Purchase of necessary equipment authorized; funding of agency expenses; deposit of monies into State General Fund.

The commission is hereby authorized and empowered to purchase all necessary equipment to enforce the provisions of this chapter, and to pay for the same out of the commission's regulation fund.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Codes, 1942, § 7692-08; Laws, 1958, ch. 505, § 9; Laws, 1987, ch. 343, § 10; Laws, 2016, ch. 459, § 61, eff from and after July 1, 2016; Laws, 2018, ch. 332, Laws, 2018, ch. 332, § 12, eff from and after passage (approved March 8, 2018).

Editor's Notes —

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes —

The 2018 amendment, effective March 8, 2018, substituted "out of the commission's regulation fund" for "out of the 'Public Service Commission Regulation Fund' " at the end of the first paragraph.

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

§ 77-7-339. Payment of salaries and expenses shall be from the motor carrier regulation account; funding of agency expenses; deposit of monies into State General Fund.

The salary of the chief enforcement officer and the inspectors, and the reasonable and necessary expenses of such employees and the administration of the duties imposed on the commission by this chapter, shall be paid out of the special fund in the State Treasury designated as the commission's regulation fund, upon requisition and warrants in the same manner provided by law for the disbursements of appropriations for the commission. An itemized account shall be kept of all receipts and expenditures and shall be reported to the Legislature by the commission.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Codes, 1942, § 7692-09; Laws, 1958, ch. 505, § 10; Laws, 1987, ch. 343, § 11; Laws, 2016, ch. 459, § 60, eff from and after July 1, 2016; Laws, 2018, ch. 332, § 13, eff from and after passage (approved March 8, 2018).

Editor's Notes —

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes —

The 2018 amendment, effective March 8, 2018, substituted "designated as the commission's regulation fund" for "designated as the 'Public Service Commission Regulation Fund' " in the first sentence of the first paragraph.

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

§ 77-7-341. Cooperation with other agencies authorized.

For the purpose of administering and enforcing the provisions of this chapter, the commission shall have the power, and is directed to cooperate with and use the services of the members of the highway safety patrol and the inspectors employed by the Mississippi Department of Transportation, and the commission shall utilize the facilities and equipment of the inspection stations maintained by the Mississippi Department of Transportation. However, in utilizing these personnel and facilities, the commission shall not interfere with or impede the performance by the personnel of the duties and responsibilities otherwise assigned to them.

HISTORY:

Codes, 1942, § 7692-05; Laws, 1958, ch. 505, § 6; Laws, 1993, ch 561, § 21, eff from and after October 1, 1993.

CHAPTER 8.

TRANSPORTATION NETWORK COMPANIES

Sec.
77-8-1. Definitions.
77-8-3. Transportation network companies or drivers not common carriers; registration of vehicle not required.
77-8-5. License required; fee.
77-8-7. Agent for service of process.
77-8-9. Fares for services provided.
77-8-11. Driver and vehicle identification.
77-8-13. Electronic receipt provided to rider.
77-8-15. Transportation network companies and drivers insurance requirements.
77-8-17. Disclosures.
77-8-19. Exclusion of coverage by automobile insurance providers.
77-8-21. Drivers as independent contractors.
77-8-23. Zero tolerance for use of drugs or alcohol by drivers.
77-8-25. Transportation network driver requirements.
77-8-27. Solicitation or acceptance of street hails prohibited.
77-8-29. Solicitation or acceptance of cash for fares prohibited.
77-8-31. Discrimination with respect to riders prohibited; service animals accommodated.
77-8-33. Customer records.
77-8-35. Inspection of records by commissioner.
77-8-37. Controlling authority; reasonable regulations by airport owners or operators.
77-8-39. Rules and regulations.

§ 77-8-1. Definitions.

As used in this chapter:

(a) "Personal vehicle" means a vehicle that is used by a transportation network company driver and is:

(i) Owned, leased or otherwise authorized for use by the transportation network company driver; and

(ii) Not a common carrier by motor vehicle, contract carrier by motor vehicle, or restricted motor carrier under Chapter 7, Title 77, Mississippi Code of 1972.

(b) "Commissioner" means the Commissioner of Insurance.

(c) "Department" means the Mississippi Department of Insurance.

(d) "Digital network" means any online-enabled technology application service, website or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers.

(e) "Transportation network company" means a corporation, partnership, sole proprietorship, or other entity that is licensed under this chapter and operating in Mississippi that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company shall not be deemed to control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract.

(f) "Transportation network company driver" or "driver" means an individual who:

(i) Receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and

(ii) Uses a personal vehicle to offer or provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

(g) "Transportation network company rider" or "rider" means an individual or persons who use a transportation network company's digital network to connect with a transportation network driver who provides prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider.

(h) "Prearranged ride" means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. A prearranged ride does not include transportation provided using a common carrier by motor vehicle, contract carrier by motor vehicle, or restricted motor carrier under Chapter 7, Title 77, Mississippi Code of 1972. A prearranged ride does not include shared expense carpool arrangements or vanpooling as defined in Section 77-7-7, or any other type of arrangement or service in which the driver receives a fee that does not exceed the driver's costs associated with providing the ride.

HISTORY:
Laws, 2016, ch. 328, § 1, eff from and after July 1, 2016.

§ 77-8-3. Transportation network companies or drivers not common carriers; registration of vehicle not required.

Transportation network companies or transportation network company drivers are not common carriers by motor vehicle, contract carriers by motor vehicle, or restricted motor carriers under Chapter 7, Title 77, Mississippi Code of 1972, nor do they provide taxicab or limousine services. A transportation network company driver shall not be required to register the vehicle the driver uses to provide prearranged rides as a commercial vehicle.

HISTORY:
Laws, 2016, ch. 328, § 2, eff from and after July 1, 2016.

§ 77-8-5. License required; fee.

(1) A person shall not operate a transportation network company in Mississippi without first having obtained a license from the department, provided that any transportation network company operating in this state

before July 1, 2016, may continue operating until the department creates a license process and sets a registration deadline.

(2) The Department shall issue a license to each applicant that meets the requirements for a transportation network company as provided for in this chapter, and pays an annual license fee of Five Thousand Dollars ($5,000.00) to the department.

HISTORY:
Laws, 2016, ch. 328, § 3, eff from and after July 1, 2016.

§ 77-8-7. Agent for service of process.

The transportation network company shall maintain an agent for service of process in the State of Mississippi.

HISTORY:
Laws, 2016, ch. 328, § 4, eff from and after July 1, 2016.

§ 77-8-9. Fares for services provided.

On behalf of a transportation network company driver, a transportation network company may charge a fare for the services provided to riders; however, if a fare is collected from a rider, the transportation network company shall disclose to the rider the fare or fare calculation method on its website or within the online-enabled technology application service. The transportation network company shall also provide riders with the applicable rates being charged and the option to receive an estimated fare before the rider enters the transportation network company driver's vehicle.

HISTORY:
Laws, 2016, ch. 328, § 5, eff from and after July 1, 2016.

§ 77-8-11. Driver and vehicle identification.

The transportation network company's online-enabled technology application or website shall display a picture of the transportation network company driver, and the license plate number of the motor vehicle utilized for providing the prearranged ride before the rider enters the transportation network company driver's vehicle.

HISTORY:
Laws, 2016, ch. 328, § 6, eff from and after July 1, 2016.

§ 77-8-13. Electronic receipt provided to rider.

Within a reasonable period of time following the completion of a trip, a transportation network company shall transmit an electronic receipt to the rider on behalf of the transportation network company driver that lists:

(a) The origin and destination of the trip;
(b) The total time and distance of the trip; and
(c) An itemization of the total fare paid, if any.

HISTORY:
Laws, 2016, ch. 328, § 7, eff from and after July 1, 2016.

§ 77-8-15. Transportation network companies and drivers insurance requirements.

(1) On or before July 1, 2016, and thereafter, a transportation network company driver or transportation network company on the driver's behalf shall maintain primary automobile insurance that recognizes that the driver is a transportation network company driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver:

(a) While the driver is logged on to the transportation network company's digital network; or

(b) While the driver is engaged in a prearranged ride.

(2) A participating transportation network company driver who is logged on to the transportation network company's digital network and is available to receive transportation requests but is not engaged in a prearranged ride shall be covered by primary automobile liability insurance in the amount of at least Fifty Thousand Dollars ($50,000.00) for death and bodily injury per person, One Hundred Thousand Dollar ($100,000.00) for death and bodily injury per incident and Twenty-five Thousand Dollars ($25,000.00) for property damage and uninsured motorist to the extent required by Section 83-11-101.

(3) The coverage requirements of subsection (2) of this section may be satisfied by any of the following:

(a) Automobile insurance maintained by the transportation network company driver; or

(b) Automobile insurance maintained by the transportation network company; or

(c) Any combination of paragraphs (a) and (b) of this subsection.

(4)(a) While a transportation network company driver is engaged in a prearranged ride he must be covered by a primary automobile liability insurance that provides at least One Million Dollars ($1,000,000.00) for death, bodily injury and property damage and uninsured motorist to the extent required by Section 83-11-101.

(b) The coverage requirements of this subsection may be satisfied by any of the following:

(i) Automobile insurance maintained by the transportation network company driver; or

(ii) Automobile insurance maintained by the transportation network company; or

(iii) Any combination of paragraphs (a) and (b) of this subsection.

(5) If insurance maintained by driver in subsections (3) or (4) of this section has lapsed or does not provide the required coverage, insurance

maintained by a transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim and the insurer shall have the duty to defend such claim.

(6) Coverage under an automobile insurance policy maintained by the transportation network company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(7) Insurance required by this section may be placed with an insurer licensed to do business in Mississippi or with a surplus lines insurer eligible under Section 83-21-17 et seq.

(8) Insurance satisfying the requirements of this section shall be deemed to satisfy the financial responsibility requirement for a motor vehicle under the Mississippi Motor Vehicle Safety Responsibility Law Section 63-15-1 et seq.

(9) A transportation network company driver shall carry proof of coverage satisfying this section with him or her at all times during his or her use of a vehicle in connection with a transportation network company's digital network. In the event of an accident, a transportation network company driver shall provide this insurance coverage information to the directly interested parties, automobile insurers and investigating police officers, upon request. Upon a request, a transportation network company driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers, whether he or she was logged on to the transportation network company's digital network or on a prearranged ride at the time of an accident.

HISTORY:

Laws, 2016, ch. 328, § 8, eff from and after July 1, 2016.

§ 77-8-17. Disclosures.

The transportation network company shall disclose in writing to transportation network company drivers the following before they are allowed to accept a request for a prearranged ride on the transportation network company's digital network:

(a) The insurance coverage, including the types of coverage and the limits for each coverage, that the transportation network company provides while the transportation network company driver uses a personal vehicle in connection with a transportation network company's digital network; and

(b) That the transportation network company driver's own automobile insurance policy might not provide any coverage while the driver is logged on to the transportation network company's digital network and is available to receive transportation requests or is engaged in a prearranged ride, depending on its terms.

HISTORY:

Laws, 2016, ch. 328, § 9, eff from and after July 1, 2016.

§ 77-8-19. Exclusion of coverage by automobile insurance providers.

(1) Insurers that write automobile insurance in Mississippi may exclude any and all coverage afforded under the policy issued to an owner or operator of a personal vehicle for any loss or injury that occurs while a driver is logged on to a transportation network company's digital network or while a driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy including, but not limited to:

(a) Liability coverage for bodily injury and property damage;
(b) Uninsured and underinsured motorist coverage;
(c) Medical payments coverage;
(d) Comprehensive physical damage coverage; and
(e) Collision physical damage coverage.

(2) The exclusions provided for in subsection (1) of this section shall apply notwithstanding any requirement under the Mississippi Motor Vehicle Safety Responsibility Law Section 63-15-1 et seq. Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while the driver is logged on to the transportation network company's digital network, while the driver is engaged in a prearranged ride or while the driver otherwise uses a vehicle to transport passengers for compensation. Nothing shall preclude an insurer from providing coverage for the transportation network company driver's vehicle, if it chooses to do so by contract or endorsement.

(3) Automobile insurers that exclude the coverage described in Section 77-8-15 shall have no duty to defend or indemnify any claim expressly excluded. Nothing in this chapter shall invalidate or limit an exclusion contained in a policy including any policy in use or approved for use in Mississippi prior to July 1, 2016, that excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public. An automobile insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy, shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of Section 77-8-15 at the time of loss.

(4) In a claims coverage investigation, transportation network companies and any insurer providing coverage under Section 77-8-15 shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the transportation network company driver if applicable, including the precise times that a transportation network company driver logged on and off of the transportation network company's digital network in the twelve-hour period immediately preceding and in the twelve-hour period immediately following the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any automobile insurance maintained under Section 77-8-15.

HISTORY:

Laws, 2016, ch. 328, § 10, eff from and after July 1, 2016.

§ 77-8-21. Drivers as independent contractors.

Drivers shall be independent contractors and not employees of the transportation network company if all of the following conditions are met:

(a) The transportation network company does not prescribe specific hours during which a transportation network company driver must be logged into the transportation network company's digital platform;

(b) The transportation network company imposes no restrictions on the transportation network company driver's ability to utilize digital platforms from other transportation network companies;

(c) The transportation network company does not assign a transportation network company driver a particular territory in which to operate;

(d) The transportation network company does not restrict a transportation network company driver from engaging in any other occupation or business; and

(e) The transportation network company and transportation network company driver agree in writing that the driver is an independent contractor of the transportation network company.

HISTORY:

Laws, 2016, ch. 328, § 11, eff from and after July 1, 2016.

§ 77-8-23. Zero tolerance for use of drugs or alcohol by drivers.

(1) The transportation network company shall implement a zero tolerance policy regarding a transportation network company driver's activities while accessing the transportation network company's digital platform. The zero tolerance policy shall address the use of drugs or alcohol while a transportation network company driver is providing prearranged rides or is logged into the transportation network company's digital network but is not providing prearranged rides, and the transportation network company shall provide notice of this policy on its website, as well as procedures to report a complaint about a driver with whom a rider was matched and whom the rider reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(2) Upon receipt of such rider complaint alleging a violation of the zero tolerance policy, the transportation network company shall suspend such transportation network company driver's access to the transportation network company's digital platform as soon as possible, and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(3) The transportation network company shall maintain records relevant to the enforcement of this requirement for a period of at least two (2) years

from the date that a rider complaint is received by the transportation network company.

HISTORY:

Laws, 2016, ch. 328, § 12, eff from and after July 1, 2016.

§ 77-8-25. Transportation network driver requirements.

(1) Before allowing an individual to accept trip requests through a transportation network company's digital platform as a transportation network company driver:

(a) The individual shall submit an application to the transportation network company, which includes information regarding his or her address, age, driver's license, motor vehicle registration, automobile liability insurance, and other information required by the transportation network company;

(b) The transportation network company shall conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include:

(i) Multistate/multijurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search); and

(ii) United States Department of Justice National Sex Offender Public Website;

(2) The transportation network company shall review, or have a third party review, a driving history research report for such individual.

(3) The transportation network company shall not permit an individual to act as a transportation network company driver on its digital platform who:

(a) Has had more than three (3) moving violations in the prior three-year period, or one (1) of the following major violations in the prior three-year period:

(i) Attempting to evade the police;

(ii) Reckless driving; or

(iii) Driving on a suspended or revoked license;

(b) Has been convicted, within the past seven (7) years, of

(i) Any felony; or

(ii) Misdemeanor driving under the influence, reckless driving, hit and run, or any other driving-related offense or any misdemeanor violent offense or sexual offense;

(c) Is a match in the U.S. Department of Justice National Sex Offender Public Website;

(d) Does not possess a valid driver's license;

(e) Does not possess proof of registration for the motor vehicle used to provide prearranged rides;

(f) Does not possess proof of automobile liability insurance for the motor vehicle used to provide prearranged rides; or

(g) Is not at least nineteen (19) years of age.

HISTORY:
Laws, 2016, ch. 328, § 13, eff from and after July 1, 2016.

§ 77-8-27. Solicitation or acceptance of street hails prohibited.

A transportation network company driver shall not solicit or accept street hails.

HISTORY:
Laws, 2016, ch. 328, § 14, eff from and after July 1, 2016.

§ 77-8-29. Solicitation or acceptance of cash for fares prohibited.

The transportation network company shall adopt a policy prohibiting solicitation or acceptance of cash payments for the fares charged to riders for prearranged rides and notify transportation network company drivers of the policy. Transportation network company drivers shall not solicit or accept cash payments from riders.

HISTORY:
Laws, 2016, ch. 328, § 15, eff from and after July 1, 2016.

§ 77-8-31. Discrimination with respect to riders prohibited; service animals accommodated.

(1) The transportation network company shall adopt a policy of nondiscrimination with respect to riders and potential riders and notify transportation network company drivers of the policy.

(2) Transportation network company drivers shall comply with all applicable laws regarding nondiscrimination against riders or potential riders.

(3) Transportation network company drivers shall comply with all applicable laws relating to accommodation of service animals.

(4) A transportation network company shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.

HISTORY:
Laws, 2016, ch. 328, § 16, eff from and after July 1, 2016; brought forward without change, Laws, 2018, ch. 341, § 10, eff from and after July 1, 2018.

Amendment Notes —
The 2018 amendment brought the section forward without change.

§ 77-8-33. Customer records.

A transportation network company shall maintain the following customer records:

(a) Individual trip records for at least one (1) year from the date each trip was provided; and

(b) Individual records of transportation network company driver customers at least until the one-year anniversary of the date on which a transportation network company driver's customer relationship with the transportation network company has ended.

HISTORY:

Laws, 2016, ch. 328, § 17, eff from and after July 1, 2016.

§ 77-8-35. Inspection of records by commissioner.

(1) For the sole purpose of verifying that a transportation network company is in compliance with the requirements of this chapter and not more than annually, the commissioner shall have the right to visually inspect a sample of records that the transportation network company is required to maintain. The sample shall include required records pertaining to up to fifty (50) transportation network drivers, provided that the transportation network company shall undertake best efforts not to share records about the same transportation network company driver during consecutive reporting periods. If, after this initial review, the commissioner has a reasonable basis to conclude that the transportation network company is not in compliance with the requirements of this chapter, the commissioner may, upon reasonable notice, conduct a supplemental audit of records for an additional selection of transportation network company drivers. The audit shall take place at a mutually agreed location in Mississippi. The expenses of the examination shall be borne and paid by the transportation network company that is under examination.

(2) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under this chapter shall be confidential by law and privileged, and shall not be subject to the Mississippi Public Records Act. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(3) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential and privileged documents, materials or other information, with other state, federal and international regulatory agencies, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information. The commissioner may enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) In response to a specific complaint against any transportation network company driver or transportation network company, the commissioner is

authorized to inspect records held by the transportation network company that are necessary to investigate and resolve the complaint.

HISTORY:
Laws, 2016, ch. 328, § 18, eff from and after July 1, 2016.

§ 77-8-37. Controlling authority; reasonable regulations by airport owners or operators.

(1) Transportation network companies and transportation network company drivers are governed exclusively by this chapter and any rules promulgated by the commissioner consistent with this chapter. A county, municipality or other local entity may not:

(a) Impose a tax on, or require a license for, a transportation network company, a transportation network company driver or a vehicle used by a transportation network company driver where the tax or licenses relate to providing prearranged rides;

(b) Require a transportation network company or a transportation network company driver to obtain a business license or any other type of similar authorization to operate within the jurisdiction; or

(c) Subject a transportation network company or a transportation network company driver to any type of rate, entry, operational or other requirements.

(2) Notwithstanding subsection (1) of this section, a county, municipality or other local entity that owns or operates an airport, may adopt reasonable regulations relating to the duties and responsibilities on airport property of a transportation network company or transportation network company driver, including its ability to impose reasonable fees and vehicle tracking requirements on a transportation network company or its affiliated transportation network company drivers, but excluding its ability to impose other fees, taxes, registration, licensing or special insurance requirements on transportation network company drivers, and excluding its ability to impose requirements with respect to special markings or identification other than that provided for in Section 77-8-11, and excluding its ability to impose requirements for equipment.

HISTORY:
Laws, 2016, ch. 328, § 19, eff from and after July 1, 2016.

§ 77-8-39. Rules and regulations.

The commissioner may adopt rules and regulations necessary to ensure compliance with this chapter.

HISTORY:
Laws, 2016, ch. 328, § 20, eff from and after July 1, 2016.

CHAPTER 9.

RAILROADS AND OTHER COMMON CARRIERS

Article 1. General Provisions. 77-9-1
Article 3. Railroads and Railroad Corporations. 77-9-101
Article 5. Express Companies. 77-9-601
Article 7. Telegraph and Telephone Companies. 77-9-701

ARTICLE 1.

GENERAL PROVISIONS.

Sec.
77-9-1 and 77-9-3. Repealed.
77-9-5. "Railroad," "company" and "commission" defined.
77-9-7. Repealed.
77-9-9 and 77-9-11. Repealed.
77-9-13. Repealed.
77-9-15. Penalty.
77-9-17 through 77-9-25. Repealed.
77-9-27. Surety bonds of employees shall not be required to be in any particular company.
77-9-29. Sureties shall be authorized to do business in state.
77-9-31. Bond shall cover definite term; cancellation of bond.
77-9-33. Penalty.
77-9-35. Liability of the last of several carriers.
77-9-37. Settlement of claims for lost or damaged freight shall be within reasonable time.
77-9-39. Sale of goods for transportation charges.
77-9-41. Repealed.

§§ 77-9-1 and 77-9-3. Repealed.

Repealed by Laws, 1997, ch. 460, §§ 1, 2, eff from and after July 1, 1997.

§ 77-9-1. [Codes, 1892, § 4331; 1906, § 4885; Hemingway's 1917, § 7672; 1930, § 7044; 1942, § 7820; Laws, 1908, ch. 82.]

§ 77-9-3. [Codes, 1892, § 4332; 1906, § 4886; Hemingway's 1917, § 7673; 1930, § 7045; 1942, § 7821; Laws, 1908, ch. 83; 1984, ch. 512, § 1]

Editor's Notes —

Former § 77-9-1 provided that the Public Service Commission enforce compliance with the railroad laws.

Former § 77-9-3 provided that the Public Service Commission visit each county to hear complaints and investigate service.

§ 77-9-5. "Railroad," "company" and "commission" defined.

(1) The term "railroad" as used in this chapter, includes and applies to every person, firm, association of persons, and company, whether incorporated or not, who or which shall own or operate a railroad as a common carrier.

(2) The term "company" as used in this chapter, embraces and applies to every person, firm, association of persons, and company, whether incorporated or not, who or which shall own or operate a telegraph or telephone line, or do an express or sleeping car business.

(3) The term "commission," as used in this chapter, means the Mississippi Transportation Commission.

HISTORY:

Codes, 1892, § 4336; 1906, § 4891; Hemingway's 1917, § 7677; 1930, § 7046; 1942, § 7822; Laws, 1908, ch. 87; Laws, 2018, ch. 332, § 14, eff from and after passage (approved March 8, 2018).

Amendment Notes —

The 2018 amendment, effective March 8, 2018, added (3).

Cross References —

Applicability of provision prohibiting transportation of certain materials out of the state under certain circumstances, see § 97-17-71.

JUDICIAL DECISIONS

1. In general.

If trustee could not operate railroad, state's remedy was by quo warranto not anti-trust law proceedings. State ex rel. Knox v. Edward Hines Lumber Co., 150 Miss. 1, 115 So. 598, 1928 Miss. LEXIS 101 (Miss. 1928).

§ 77-9-7. Repealed.

Repealed by Laws, 1984, ch. 512, § 5, eff from and after July 1, 1984.

[Codes, 1906, § 4892; Hemingway's 1917, § 7678; 1930, § 7047; 1942, § 7823; Laws, 1898, ch. 82; 1908, ch. 87]

Editor's Notes —

Former Section 77-9-7 pertained to the supervision of car service associations by the commission.

§§ 77-9-9 and 77-9-11. Repealed.

Repealed by Laws, 1997, ch. 460, §§ 3, 4, eff from and after July 1, 1997.

§ 77-9-9. [Codes, 1892, § 4325; 1906, § 4879; Hemingway's 1917, § 7664; 1930, § 7056; 1942, § 7832]

§ 77-9-11. [Codes, 1892, §§ 4290, 4291; 1906, §§ 4842, 4843; Hemingway's 1917, §§ 7627, 7628; 1930, §§ 7095, 7096; 1942, §§ 7871, 7872]

Editor's Notes —

Former § 77-9-9 authorized the Public Service Commission to have general supervision and regulation of the railroads.

Former § 77-9-11 provided for the regulation and revision of tariffs or charges to railroads.

§ 77-9-13. Repealed.

Repealed by Laws, 1992, ch. 496, § 72, eff from and after July 1, 1992.

[Codes, 1892, § 4292; 1906, § 4844; Hemingway's 1917, § 7629; 1930, § 6141; 1942, § 7793; Laws, 1916, ch. 233; 1940, ch. 164]

Editor's Notes —

Former § 77-9-13 regulated free transportation on common carriers.

§ 77-9-15. Penalty.

If any common carrier shall give to any person a free pass or ticket, or transport him free of charge, contrary to law, such common carrier shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars.

HISTORY:
Codes, Hemingway's 1917, § 7553; 1930, § 6143; 1942, § 7795; Laws, 1916, ch. 132; Laws, 1940, ch. 164.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§§ 77-9-17 through 77-9-25. Repealed.

Repealed by Laws, 1997, ch. 460, § 5-9, eff from and after July 1, 1997.

§ 77-9-17. [Codes, 1892, § 4323; 1906, § 4877; Hemingway's 1917, § 7662; 1930, § 7055; 1942, § 7831; Laws, 1928, ch. 204]

§ 77-9-19. [Codes, 1892, § 4296; 1906, § 4848; Hemingway's 1917, § 7633; 1930, § 7101; 1942, § 7877]

§ 77-9-21. [Codes, 1892, § 4283; 1906, § 4835; Hemingway's 1917, § 7620; 1930, § 7039; 1942, § 7816]

§ 77-9-23. [Codes, 1892, § 4281; 1906, § 4833; Hemingway's 1917, § 7618; 1930, § 7032; 1942, § 7809; Laws, 1984, ch. 512, § 2]

§ 77-9-25. [Codes, 1892, § 4282; 1906, § 4834; Hemingway's 1917, § 7619; 1930, § 7033; 1942, § 7810]

Editor's Notes —
Former § 77-9-17 provided for a penalty against railroad companies that fail to make annual reports.

Former § 77-9-19 provided that certain information be furnished by railroads to the Public Service Commission.

Former § 77-9-21 provided for the manner of service or execution of orders and decisions of the Public Service Commission affecting railroads.

Former § 77-9-23 provided for notice of complaints given to railroads by the Public Service Commission.

Former § 77-9-25 provided for the service or execution of notices upon railroads.

§ 77-9-27. Surety bonds of employees shall not be required to be in any particular company.

No common carrier, authorized to do business in this state, when requiring of an employee that he give it a bond or undertaking of any nature whatever, shall require such employee to have such bond or undertaking executed as surety by any particular company, corporation, association, or firm, or by any one or more of any number of such companies, corporations, associations or firms named by such common carrier. No such common carrier shall reject any such bond or undertaking for any reason other than the financial insufficiency of such bond or undertaking.

HISTORY:
Codes, Hemingway's 1917, § 7707; 1930, § 7135; 1942, § 7894; Laws, 1914, ch. 152.

Cross References —
Surety companies generally, see Chapter 27 of Title 83.

§ 77-9-29. Sureties shall be authorized to do business in state.

No common carrier, authorized to do business in this state, when requiring of any employee that he give it a bond or undertaking of any nature, whatsoever, shall require as surety thereon any companies, corporations, associations or firms not a resident of this state. No such common carrier shall accept as such surety any company, corporation or association, unless the same is a corporation duly organized under the laws of Mississippi or which shall have designated an agent residing within this state upon whom service of legal process against it may be made, as provided for foreign corporations doing business in this state, and shall also require that every such bond or undertaking shall be approved, and cancelled, if cancelled, by said agent with whom a complete record thereof shall be kept.

HISTORY:
Codes, Hemingway's 1917, § 7708; 1930, § 7136; 1942, § 7895; Laws, 1914, ch. 152.

§ 77-9-31. Bond shall cover definite term; cancellation of bond.

Every bond or undertaking of any nature whatsoever given by an employee of any common carrier authorized to do business in this state, shall be made to cover a definite term. No such bond or undertaking shall be cancelled without the consent of all parties thereto, except for a breach of one or more of the conditions thereof. Any such employee who shall have given any such bond or undertaking, shall, upon breach of any of the conditions thereof by the other party or parties thereto, have the power to cancel the same by giving the surety or sureties thereon and the common carrier for the benefit of whom the same shall have been made, at least ten (10) days' notice in writing, setting out in full the reasons for cancelling the same. Said notice shall be signed by such employee sworn to by him in this state before an officer authorized to administer oaths. Any such notice to a company, corporation or association may be served by leaving the same with any person upon whom service of legal process upon such company, corporation or association may be had. Any surety on any such bond or undertaking, shall upon the breach of any of the conditions thereof by the common carrier employee for whom the same shall have been made, have power to cancel the same by giving such employee at least ten (10) days' notice in writing, setting out in full the reasons for cancelling the same. The said notice shall be signed by an agent or manager of such surety, then a resident of this state, and then authorized to approve or disapprove similar bonds or undertakings for such surety, and shall be sworn to by the person signing the same in this state before an officer authorized to administer oaths. Nothing herein shall affect any right of action accruing to any person upon the breach of a contract.

HISTORY:
Codes, Hemingway's 1917, § 7709; 1930, § 7137; 1942, § 7896; Laws, 1914, ch. 152.

§ 77-9-33. Penalty.

Any officer, agent, or representative of any company, corporation, association or firm, or any other person who shall violate any of the provisions of Sections 77-9-27 through 77-9-31, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) and by imprisonment in the county jail for a period of not less than thirty (30) days, nor more than one (1) year. Any bond, contract, or undertaking made in violation of said provisions shall be void.

HISTORY:
Codes, Hemingway's 1917, § 7710; 1930, § 7138; 1942, § 7897; Laws, 1914, ch. 152.

Cross References —
Imposition of standard state assessment in addition to all court-imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 77-9-35. Liability of the last of several carriers.

If a common carrier receive freight for further transportation and delivery within this state from another carrier, on any contract, express or implied, for continuous carriage, and it arrive at the place of delivery in a broken or damaged condition, or some parts thereof be lost or destroyed, it is the duty of the last carrier to obtain and furnish to the consigneee or other person interested, on demand, true copies of all notations, exceptions, records, and memoranda entered on the books of each carrier touching the receipt, transfers, and handling of the freight while in transit. If such last carrier shall not so furnish the same within thirty (30) days after demand, it shall be presumed to have caused such damage, loss, or destruction. In case of damage, loss, or destruction of perishable goods, by reason of their nature, and of damage not discoverable by outward inspection, proof thereof shall be admissible.

HISTORY:
Codes, 1892, § 4301; 1906, § 4853; Hemingway's 1917, § 7638; 1930, § 7107; 1942, § 7882.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Demand.
3. Presumption.
4. Evidence.

1. In general.
This section [Code 1942, § 7882] does not affect rule that connecting carrier is liable for damaged goods unless it shows injury was not its fault. Jordan v. Mississippi C. R. Co., 107 Miss. 323, 65 So. 276, 1914 Miss. LEXIS 85 (Miss. 1914).

2. Demand.
For the consignee of a car of freight to write the last of connecting carriers that there was a shortage of freight, saying "Kindly trace shortage," is not such a demand as to make such carrier liable under Code 1892, § 4301 (Code 1906, § 4853). Threefoot Bros. & Co. v. New Orleans & N. E. R. Co., 89 Miss. 192, 43 So. 303, 1906 Miss. LEXIS 100 (Miss. 1906).

3. Presumption.
Under Code 1892, § 4301, the presumption raised is conclusive save in the two excepted cases. Russell v. Mobile & O. R. Co., 87 Miss. 806, 40 So. 1015, 1905 Miss. LEXIS 221 (Miss. 1905).

4. Evidence.
Evidence of giving notice of claim against carrier, in writing, held properly excluded since the writing itself was best evidence; evidence of contents would be competent if carrier failed to produce it when notified to do so. Jordan v.

Mississippi C. R. Co., 107 Miss. 323, 65 So. 276, 1914 Miss. LEXIS 85 (Miss. 1914).

RESEARCH REFERENCES

ALR.
Railroad carrier's liability where goods were allegedly damaged by failure to properly refrigerate. 4 A.L.R.3d 994.

§ 77-9-37. Settlement of claims for lost or damaged freight shall be within reasonable time.

Railroads, corporations and individuals engaged as common carriers in this state are required to settle all claims for lost or damaged freight which has been lost or damaged between two (2) given points on the same line or system, within sixty (60) days from the filing of written notice of the loss or damage with the agent at the point of destination. Where freight is handled by two (2) or more roads or systems of roads, and is lost or damaged, claims therefor shall be settled within ninety (90) days from the filing of written notice thereof with the agent by consignee at the point of destination. A common carrier failing to settle such claims as herein required shall be liable to the consignee for twenty-five dollars ($25.00) damages in each case, in addition to actual damages, all of which may be recovered in the same suit. This section shall only apply when the amount claimed is two hundred dollars ($200.00) or less.

HISTORY:
Codes, 1906, § 4070; Hemingway's 1917, § 6699; 1930, § 7112; 1942, § 7887; Laws, 1904, ch. 152; Laws, 1908, ch. 196.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Penalty for delay in settlement.

1. In general.
This section [Code 1942, § 7887] is not interference with interstate commerce. Mobile & O. R. Co. v. Greenwald & Champenois, 104 Miss. 417, 61 So. 426, 1913 Miss. LEXIS 43 (Miss. 1913).

2. Penalty for delay in settlement.
Shipper need not recover full amount demanded in order to authorize penalty for delay in settlement. Mobile & O. R. Co. v. Brandon, 98 Miss. 461, 53 So. 957, 1910 Miss. LEXIS 84 (Miss. 1910).

RESEARCH REFERENCES

ALR.
Railroad carrier's liability where goods were allegedly damaged by failure to properly refrigerate. 4 A.L.R.3d 994.

Am. Jur.
14 Am. Jur. 2d, Carriers §§ 610 et seq.

CJS.
13 C.J.S., Carriers §§ 470, 471.

§ 77-9-39. Sale of goods for transportation charges.

(1) When the consignee or owner of any goods or articles transported on any railroad cannot be found or refuses to receive the same or pay the charges, or neglects to do so for a period of fifteen (15) days after notice addressed to the

consignee and deposited in the post office, application may be made by the railroad company or its agent to a justice court judge for an order of sale. If it be made to appear that the goods have been transported by the company, and that the consignee or owner cannot be found, or refuses or neglects to pay the costs and charges of transportation, or to receive the goods, the judge shall issue an order directed to the sheriff, or any constable or marshal, directing the sale of the goods at public vendue, at such time as the judge may direct, and the payment out of the proceeds of the sale of the charges on such goods, and all costs which have accrued in procuring the order and making the sale. Should there be a balance left, it shall be paid into the county treasury. The owner of the goods may receive the same out of the treasury, on the order of the board of supervisors, if applied for within two (2) years, but not afterward. Perishable goods may be sold, according to the exigency, if not immediately called for and taken.

(2) The owners of steamboats and other watercraft, and warehousemen, have the right to enforce charges for freight and storage in accordance with the provisions of subsection (1) of this section, on goods which have been transported or stored by them where the consignee or owner cannot be found, or refuses or neglects to pay such charges.

HISTORY:
Codes, 1892, §§ 2108, 2109; 1906, §§ 2293, 2294; Hemingway's 1917, §§ 4682, 4683; 1930, §§ 7113, 7114; 1942, §§ 7888, 7889; Laws, 1888, p. 92; Laws, 1984, ch. 512, § 3, eff from and after July 1, 1984.

JUDICIAL DECISIONS

1. In general.
This section [Code 1942, § 7888] giving a carrier a lien for freight and storage with power to sell therefor applies to demurrage for delay in unloading cars. New Orleans & N. E. R. Co. v. A. H. George & Co., 82 Miss. 710, 35 So. 193, 1903 Miss. LEXIS 195 (Miss. 1903).

RESEARCH REFERENCES

Am. Jur.
13 Am. Jur. 2d, Carriers §§ 442 et seq.

CJS.
13 C.J.S., Carriers §§ 297-299 et seq.

§ 77-9-41. Repealed.

Repealed by Laws, 1997, ch. 460, § 10, eff from and after July 1, 1997.

[Codes, 1892, § 4329; 1906, § 4883; Hemingway's 1917, § 7670; 1930, § 7043; 1942, § 7819; Laws, 1908, ch. 81]

Editor's Notes —
Former § 77-9-41 provided a general penalty for violations of the railroad laws.

ARTICLE 3.

RAILROADS AND RAILROAD CORPORATIONS.

Incorporation and Consolidation of Railroad Corporations. 77-9-101
General Corporate Powers. 77-9-141
Safety. 77-9-221
Service and Facilities. 77-9-281
Conduct of Passengers. [Repealed]. 77-9-341
Rates. 77-9-371
Reports. [Repealed]. 77-9-411
Accidents; Liability in Tort. 77-9-431
Sales, Mortgages, and Leases. [Repealed]. 77-9-461
Administration and Enforcement. 77-9-481
Railroad Police Officers. 77-9-501
Abandonment of Railroad Lines. 77-9-521
Mississippi-Alabama Railroad Authority Compact. 77-9-531

INCORPORATION AND CONSOLIDATION OF RAILROAD CORPORATIONS

Sec.
77-9-101. Preparation of application to governor by persons desiring creation of railroad corporation.
77-9-103. Issuance of proclamation by governor authorizing organization of railroad corporation.
77-9-105. Recording of application and proclamation.
77-9-107. Organization and election of board of directors; selection of officers and adoption of bylaws.
77-9-109. Capital stock of railroad corporation.
77-9-111. Filing of statement showing date of organization, amount of entire capital stock, and shares into which divided.
77-9-113. Organization by purchasers of railroad sold under execution, deed of trust, or foreclosure.
77-9-115. Amendment of railroad corporation charter.
77-9-117. Amendment of charter to carry out plan of reorganization under federal laws.
77-9-119. Consolidation of railroad corporations.
77-9-121. Competing or parallel railroads shall not consolidate.

§ 77-9-101. Preparation of application to governor by persons desiring creation of railroad corporation.

Persons desiring the creation and organization of a railroad corporation may prepare an application therefor, in writing, addressed to the governor, in which they shall declare:

(a) The names, residence and post office of each of the applicants;

(b) The terminal points of the proposed railroad; if either or both be without this state, the point at or near which the state line is proposed to be crossed;

(c) The amount of authorized capital stock, with full particulars as to the class or classes thereof, including all their privileges and restrictions, and whether having a par value or being without nominal or par value;

(d) The sale price per share, if desired, of stock without par value and authority for the board of directors to fix or change such sale price, if such authority be desired;

(e) The number of shares of each class of stock necessary to be subscribed and paid for before the corporation shall commence business;

(f) The line of the proposed railroad in this state;

(g) The name by which the corporation is to be known;

(h) The time within which it is hoped the railroad will be completed.

If the applicants be the purchasers of a railroad at an execution, judicial, deed in trust or mortgage sale thereof, they shall present with their application a certified copy of the conveyance under which they hold, and shall disclose in addition:

(i) The facts of the purchase, the date thereof, when, where, and by what proceedings;

(j) The name of the former railroad company or corporation, with its location and termini;

(k) The amount of money paid for the property, and its real value, and the sum at which it is proposed to capitalize it.

HISTORY:
Codes, 1892, § 3572; 1906, § 4073; Hemingway's 1917, § 6702; 1930, § 6066; 1942, § 7717; Laws, 1938, ch. 347.

Cross References —
Powers and duties of governor generally, see § 7-1-5.

Establishment of railroad authorities by counties, see §§ 19-29-1 et seq.

Ad valorem taxation of railroads, see §§ 27-35-301 et seq.

Railroad revitalization, see §§ 57-43-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Object and purposes of corporation.

1. In general.
Corporation organized under statutes relating to railroad corporations cannot escape obligations imposed by law upon railroad corporations. Robinson Land & Lumber Co. v. Avera & N. E. R. Co., 157 Miss. 700, 128 So. 738, 1930 Miss. LEXIS 334 (Miss. 1930).

2. Object and purposes of corporation.
This section [Code 1942, § 7717] and the following section (Code 1942, § 7718) do not require that an application set forth the object and purposes of the organization of any proposed railroad corporation; but upon the organization of such corporation the powers, rights, and privileges which it is permitted to exercise, and the duties and obligations which are imposed upon it, are prescribed by law, as found in many constitutional and statutory provisions on the subject. Robinson Land & Lumber Co. v. Avera & N. E. R. Co., 157 Miss. 700, 128 So. 738, 1930 Miss. LEXIS 334 (Miss. 1930).

RESEARCH REFERENCES

Am. Jur.
65 Am. Jur. 2d, Railroads §§ 6 et seq.

CJS.
74 C.J.S., Railroads §§ 30-32 et seq.

§ 77-9-103. Issuance of proclamation by governor authorizing organization of railroad corporation.

Upon the receipt of the application, the governor shall submit the same to the attorney general, and obtain his opinion, in writing, to be indorsed thereon, whether or not it be in conformity to law. If the opinion be that the application conforms to law, and the governor believes that it is made in good faith and with bona fide intention on the part of the projectors to construct or cause to be constructed or to operate a railroad, as defined in the application, and there be no valid objection thereto, he shall issue his proclamation authorizing the persons to organize a railroad corporation.

HISTORY:

Codes, 1892, § 3573; 1906, § 4074; Hemingway's 1917, § 6703; 1930, § 6067; 1942, § 7718.

Cross References —

Duty of attorney general to give written opinion to public officials upon questions of law relating to their office, see § 7-5-25.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Object and purposes of corporation.

1. In general.

Corporation organized under statutes relating to railroad corporations cannot escape obligations imposed by law upon railroad corporations. Robinson Land & Lumber Co. v. Avera & N. E. R. Co., 157 Miss. 700, 128 So. 738, 1930 Miss. LEXIS 334 (Miss. 1930).

Railroad company receives charter on consideration that it will perform duties and fulfill obligations incurred. Estes v. Memphis & C. R. Co., 152 Miss. 814, 119 So. 199, 1928 Miss. LEXIS 259 (Miss. 1928).

2. Object and purposes of corporation.

This section [Code 1942, § 7718] and the preceding section (Code 1942, § 7717) do not require that an application set forth the object and purposes of the organization of any proposed railroad corporation; but upon the organization of such corporation the powers, rights, and privileges which it is permitted to exercise, and the duties and obligations which are imposed upon it, are prescribed by law, as found in many constitutional and statutory provisions on the subject. Robinson Land & Lumber Co. v. Avera & N. E. R. Co., 157 Miss. 700, 128 So. 738, 1930 Miss. LEXIS 334 (Miss. 1930).

§ 77-9-105. Recording of application and proclamation.

The application and the proclamation of the governor shall be attached each to the other, and both shall be recorded in the office of the secretary of state, and also in the record of deeds of each county through which the projected railroad is to extend, at the expense of the projectors. The record in the secretary of state's office shall be made before organization of the corporation, but that in the record of deeds may be made afterward, but before any corporate action shall be taken in the county.

HISTORY:

Codes, 1892, § 3574; 1906, § 4075; Hemingway's 1917, § 6704; 1930, § 6068; 1942, § 7719.

§ 77-9-107. Organization and election of board of directors; selection of officers and adoption of bylaws.

Upon the issuance of the proclamation by the governor, authorizing them so to do, and its recordation in the office of the secretary of state, the projectors shall meet and organize, and elect a board of directors of such number as they may see fit. The board, when elected, may select a president and such other officers and agents as it may deem expedient, fix their duties and compensation, and adopt by-laws.

HISTORY:
Codes, 1892, § 3575; 1906, § 4076; Hemingway's 1917, § 6705; 1930, § 6069; 1942, § 7720; Laws, 1938, ch. 347.

RESEARCH REFERENCES

Am. Jur.
65 Am. Jur. 2d, Railroads §§ 6 et seq.

CJS.
74 C.J.S., Railroads §§ 42-46.

§ 77-9-109. Capital stock of railroad corporation.

Any railroad corporation heretofore or hereafter organized under the laws of the State of Mississippi may issue one or more classes of capital stock with or without nominal or par value. Such classes of capital stock may be issued with such designations, preferences and restrictions, if any, as may be stated and expressed in the charter of incorporation or in any amendment thereto, including restrictions and qualifications upon the voting powers of any such stock not in conflict with Section 194 of the Constitution of 1890, or the provisions of this section.

Preferred capital stock with or without nominal or par value may be made subject to redemption in such manner, at such time or times, and at such price or prices; be given such preferences as to net assets upon dissolution or winding up of the corporation, whether voluntary or involuntary; be given the right to receive such cumulative or non-cumulative dividends payable quarterly, semiannually or annually, and payable as a whole or in part before any dividends shall be set apart or paid on the common stock; be authorized to be issued in more than one series of the same class, each series carrying the same or different rates of dividends; be given full, qualified or no voting power (except as required by Section 194 of the Constitution of 1890); be made convertible into shares of other classes of preferred or common stock with or without nominal or par value; and be made subject to such other restrictions, limitations and qualifications, if any, as shall be stated and prescribed or provided in the charter of incorporation, or in any amendment thereto.

Capital stock without nominal or par value, whether common or preferred, may be issued by the railroad corporation from time to time for such consideration as may be stated in the charter of incorporation or any amendment thereto, or as may thereafter from time to time be fixed by the board of directors (by whatever name called), pursuant to authority granted them in the charter of incorporation or any amendment thereto. If the power to fix said consideration be not granted in such charter or amendment, then said power shall be given, by the consent of the holders of two-thirds (⅔) of each class of stock then outstanding and entitled to vote, at a meeting called for that purpose in a manner to be prescribed, by the by-laws. All shares without nominal or par value so issued, for which the full consideration, so fixed, has been paid or delivered, shall be deemed full paid stock, and not liable to any further call or assessment thereon, and the holder of such shares shall not be liable for any further payment thereon.

In any case in which the law requires that the par value of shares of stock of a corporation be stated in any certificate or paper, it shall be stated, in respect to shares without nominal or par value, that such shares are without par value. Whenever the amount of stock, authorized or issued, is required to be stated, with respect to shares without nominal or par value, the number of shares authorized or issued shall be stated, and it shall also be stated that such shares are without par value.

Every certificate of preferred stock issued shall show upon its face all of the privileges, restrictions, limitations and qualifications affecting the same, and the total amount of authorized capital stock of the class to which it belongs. Every certificate of common stock issued shall show upon its face the total amount of authorized common capital stock. Every certificate of stock issued, whether common or preferred, shall show upon its face the par value per share thereof, if any, otherwise the fact that such shares are without nominal or par value, and shall bear the words: "incorporated in Mississippi."

No outstanding stock of any railroad corporation shall be retired if the corporation would be thereby rendered insolvent or its paid in capital be thereby reduced to less than the minimum amount required by its charter or amendments thereto, except upon dissolution.

In the event the board of directors of a railroad corporation, incorporated, chartered and organized prior to March 18, 1938, desire, they may, with the consent of the majority of the stockholders, exchange such stock as may be issued under the provisions of this section for stock previously issued, the par value of which was fixed at One Hundred Dollars ($100.00) per share by the projectors at the time of the organization of the railroad. In making such exchange the par value of the stock so issued shall be fixed at the actual value, at the time of the exchange, of the previously issued outstanding stock, and in no event shall any stock be issued of a fictitious value in exchange for any stock or for any other purpose.

HISTORY:

Codes, 1892, § 3575; 1906, § 4076; Hemingway's 1917, § 6705; 1930, § 6069; 1942, § 7720; Laws, 1938, ch. 347.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the last paragraph of this section by inserting the word "Dollars" following "One Hundred." The Joint Committee ratified the correction at its August 14, 2018, meeting.

Editor's Notes —

Section 194 of the Constitution of 1890, referred to in this section, was repealed by Laws, 1987, ch 691, eff December 4, 1987.

RESEARCH REFERENCES

CJS.

74 C.J.S., Railroads §§ 38, 39.

§ 77-9-111. Filing of statement showing date of organization, amount of entire capital stock, and shares into which divided.

When organized, the board of directors shall file in the office of the secretary of state a statement, in writing, signed by the directors and sworn to by one of them, showing the date of the organization, the amount of the entire capital stock, and the shares into which divided. The secretary of state shall file and record the statement and certify the fact under the great seal. Thereupon the company so organized shall be a body corporate under the name specified, and may exercise its powers as such, but before so doing in any county, the said certificate, or a certified copy of it, with the application and governor's proclamation, shall be recorded in the record of deeds thereof.

HISTORY:
Codes, 1892, § 3576; 1906, § 4077; Hemingway's 1917, § 6706; 1930, § 6070; 1942, § 7721.

§ 77-9-113. Organization by purchasers of railroad sold under execution, deed of trust, or foreclosure.

When any railroad shall be sold under execution, or under a deed of trust, or by a decree of a court enforcing a mortgage or other lien, the purchasers thereof and their assigns and successors shall be entitled to and be invested with all the franchises, rights, powers, privileges, and immunities, not inconsistent with the provisions of this article, appertaining to and possessed by the company or corporation whose property and franchises were sold. However, an exemption from taxation contained in any charter shall not pass to the purchaser.

Such purchasers and their assigns and successors may file with the secretary of state a statement in writing to the effect that they desire to operate the railroad so sold in accordance with the provisions and requirements of the charter of the company to which it belonged, and they shall thereupon become vested with all the powers, rights, privileges and benefits thereof not inconsistent with the provisions of this article, in the same manner and to the same extent as if they were the original incorporators of said company, and they shall thereby become a railroad corporation.

The said purchasers and assigns and successors may meet and organize a new corporation under the provisions of this article, and have all the powers, franchises, rights, privileges, and immunities provided herein, and none other, and may give it such a name as may be adopted. They shall fix the amount of the entire capital stock of the new corporation, as represented by the property and franchise bought, and otherwise organize as provided in this article.

HISTORY:
Codes, 1892, §§ 3565, 3566; 1906, §§ 4065, 4066; Hemingway's 1917, §§ 6694, 6695; 1930, §§ 6097, 6098; 1942, §§ 7749, 7750; Laws, 1882, p. 47.

§ 77-9-115. Amendment of railroad corporation charter.

The charter of any railroad corporation organized under the provisions of this article may be amended in the manner following. A resolution adopted by the stockholders owning a majority of the stock, which shall describe fully all proposed changes desired to be made in the charter, shall be submitted to the governor. The governor shall submit the same to the attorney general and obtain his opinion, in writing, to be indorsed thereon, whether or not it be in conformity to law. If the opinion be that the application conforms to law, and the governor believes that the charter should be amended as desired, he shall indorse his approval thereon. The resolution, together with the indorsements of the attorney-general and the governor, shall be filed with the secretary of state, who shall record the same and certify the fact under the great seal. The resolution shall likewise be recorded in the records of deeds of each county through which the railroad constructed or to be constructed under such charter may run. When all this shall have been done, the proposed amendment of the charter shall become effective and thereafter the charter shall stand as though the amendment described in the resolution had been originally incorporated as a part of the charter.

HISTORY:
Codes, 1906, § 4078; Hemingway's 1917, § 6707; 1930, § 6071; 1942, § 7722.

Cross References —
Duty of attorney general to give written opinion to public officials upon questions of law relating to their office, see § 7-5-25.

RESEARCH REFERENCES

CJS.
74 C.J.S., Railroads §§ 53-61.

§ 77-9-117. Amendment of charter to carry out plan of reorganization under federal laws.

(1) Notwithstanding the provisions of any other statutes of this state specifying the procedure to be followed in obtaining amendments to charters of incorporation of railroad companies incorporated under the laws of this state, in all cases where a plan of reorganization of any such railroad company, pursuant to the provisions of any applicable statute of the United States relating to the reorganization of such corporations, has been or shall be confirmed by any court of competent jurisdiction, and where the amendment of said charter of incorporation is proper to put into effect and carry out the plan of reorganization and the decrees and orders of the court or judge relative thereto, the trustee or trustees of such corporation appointed in the reorganization proceedings, or the reorganization managers or committee designated in the plan of reorganization to consummate same, or such other person or persons as may be designated by the court or judge in the reorganization proceedings, shall have full power and authority to carry out such plan of reorganization and the decrees and orders of the court relative thereto without action by the directors or stockholders of such railroad company, including the power and authority to apply for and obtain, without action by the stockholders or directors, any and all amendments to the charter of incorporation which may be proper to carry out such plan of reorganization and the decrees and orders of the court relative thereto.

(2) When the amendment of a charter of incorporation of a railroad corporation is desired under the provisions of this section, the person or

persons authorized by this section to apply for same shall prepare a petition therefor which shall be properly acknowledged before a notary public or other officer authorized to take acknowledgments and which petition shall set forth in full the desired and proposed amendments to said charter. The said petition shall likewise contain a statement that the proposed amendments are proper to carry out the plan of reorganization and the decrees and orders of the court relative thereto, and shall give the title and venue of the proceedings and the date of the decree confirming the plan. Said petition shall be filed with the governor who shall submit same to the attorney general who shall give his opinion, in writing, as to whether or not said amendments be in conformity with the law.

If the attorney general be of the opinion that the proposed amendments are in conformity with the law, and if the governor believes that the amendments should be approved, he shall endorse his approval thereon, and the petition, together with the endorsements of the attorney general and the governor, shall be filed with the secretary of state who shall record the same in his office and certify same under the great seal of the state. The said petition, when so approved and certified, shall also be recorded in the office of the chancery clerk of each county through which the railroad may run and, when all of same shall be done, the said amendments to the charter shall become effective to the same extent as though the said amendments had originally been incorporated as a part of the said charter of incorporation.

HISTORY:
Codes, 1942, § 7722.5; Laws, 1952, ch. 228, §§ 1, 2.

Cross References —
Duty of attorney general to give written opinion to public officials upon questions of law relating to their office, see § 7-5-25.

RESEARCH REFERENCES

Am. Jur.
9 Am. Jur. 2d, Bankruptcy § 786.
4 Am. Jur. Pl & Pr Forms (Rev), Bankruptcy, Forms 318 et seq. (petition in voluntary proceedings).

§ 77-9-119. Consolidation of railroad corporations.

Any railroad company organized and existing under the laws of this state and which is subject to the Interstate Commerce Commission Termination Act of 1995 shall have power to consolidate with any other railroad company, organized under the laws of this or any other state, and shall have power to purchase or lease the railroad, franchises, and properties of any other railroad company organized under the laws of this state, and to purchase and hold the capital stock or a part thereof of any other railroad company organized under the laws of this or any other state, wherever any such action has first been permitted by an act or acts of Congress and an order or orders of the U.S. Department of Transportation of the United States and of the commission. In the event of consolidation, the consolidated company shall become thereby a domestic corporation of the State of Mississippi.

Any railroad company organized and existing under the laws of this state and which is subject to the Interstate Commerce Commission Termination Act of 1995 shall have the power to merge with any other railroad company organized under the laws of this or any other state pursuant to the Mississippi Business Corporation Act.

HISTORY:

Codes, 1930, § 6105; 1942, § 7757; Laws, 1924, ch. 178; Laws, 2002, ch. 407, § 1, eff from and after July 1, 2002; Laws, 2018, ch. 332, § 15, eff from and after passage (approved March 8, 2018).

Amendment Notes —

The 2018 amendment, effective March 8, 2018, in the first sentence of the first paragraph, substituted "U.S. Department of Transportation" for "Interstate Commerce Commission," and deleted "Mississippi Public Service" preceding "commission."

Cross References —

Mississippi Business Corporation Act, see §§ 79-4-1.01 et seq.

Federal Aspects—

Interstate Commerce Commission Termination Act of 1995, see 49 USCS §§ 10101 et seq.

Offers of financial assistance to avoid abandonment and discontinuance of rail transportation service, see 49 USCS § 10904.

RESEARCH REFERENCES

Am. Jur.

65 Am. Jur. 2d, Railroads §§ 159 et seq.

21 Am. Jur. Pl & Pr Forms (Rev), Railroads, Forms 46 et seq. (safety measures and precautions).

CJS.

74 C.J.S., Railroads §§ 447 et seq.

§ 77-9-121. Competing or parallel railroads shall not consolidate.

Except as provided in Section 77-9-119, it shall be unlawful for any railroad company to consolidate with a parallel or competing railroad company, or to allow its affairs to be in any manner managed, regulated, or controlled by any such parallel or competing railroad company, or permit its affairs to be so managed, regulated, or controlled by the same person or persons who manage, regulate, or control the affairs of such competing or parallel railroad company, under penalty of the forfeiture of the charters and franchises of such company or companies; all persons, agents, or companies so offending shall be liable to the further penalty of ten thousand dollars ($10,000.00). It shall further be unlawful for competing railroad companies operating parallel lines of road within twenty (20) miles of each other to lease or purchase, directly or indirectly, the opposing line or any part thereof or any interest therein. Such contracts, no matter in whose name made, are hereby prohibited under the penalties provided in this section.

HISTORY:

Codes, 1892, § 3560; 1906, § 4057; Hemingway's 1917, § 6685; 1930, § 6106; 1942, § 7758; Laws, 1898, p. 95.

Cross References —

General prohibition against one corporation acquiring interest in competing corporation, see § 75-21-13.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Relationship to other laws.
3. Competing or parallel railroad.

1. In general.

For a general discussion of this section [Code 1942, § 7758], see State v. Mobile, J. & K. C. R. Co., 86 Miss. 172, 38 So. 732, 1905 Miss. LEXIS 78 (Miss. 1905), aff'd, 210 U.S. 187, 28 S. Ct. 650, 52 L. Ed. 1016, 1908 U.S. LEXIS 1503 (U.S. 1908).

2. Relationship to other laws.

Neither the Clayton Anti-Trust Act of October, 1914, the act of March 21, 1918, providing for the federal control of railroads, nor the Federal Transportation Act of February 29, 1920, interferes with the power of the state to punish railroad corporations for violations of its laws committed by such corporations prior to the enactment of the said federal statutes. State ex rel. Roberson v. Southern R. Co., 126 Miss. 875, 89 So. 769, 1921 Miss. LEXIS 87 (Miss. 1921).

3. Competing or parallel railroad.

The Yazoo & Mississippi Valley Railroad, a part of whose line is between Webb Station and Greenwood and the Southern Railway Company in Mississippi, a part of whose main line is between Greenwood and Itta Bena about seven or eight miles west whence it has a branch line thirty-three miles long to Webb Station, were held to be competing and parallel as to this branch. Yazoo & M. V. R. Co. v. Southern R. Co., 83 Miss. 746, 36 So. 74, 1903 Miss. LEXIS 95 (Miss. 1904).

RESEARCH REFERENCES

Am. Jur.

65 Am. Jur. 2d, Railroads § 161.

CJS.

74 C.J.S., Railroads §§ 447 et seq.

GENERAL CORPORATE POWERS

Sec.	
77-9-141.	Powers, rights and privileges of railroad corporations.
77-9-143.	Repealed.
77-9-145.	Suing; having a common seal.
77-9-147.	Building and operating railroad.
77-9-149.	Collecting charges for transportation of persons and property.
77-9-151.	Issuing stocks and bonds.
77-9-153.	Increasing capital stock; issuing preferred stock to satisfy obligations.
77-9-155.	Determining number of directors, officers and agents; prescribing compensation, duties and terms thereof.
77-9-157.	Authorizing appointment of executive committee.
77-9-159.	Opening books of subscription; calling stockholders' meetings.
77-9-161.	Mortgaging; securing mortgage bonds.
77-9-163.	Repealed.
77-9-165.	Leasing railroad and its properties.
77-9-167.	Doing an express or telegraph business.
77-9-169.	Having right of way generally.
77-9-171.	Having right of way over state lands.
77-9-173.	Entering upon land adjacent to its right of way.
77-9-175.	Acquiring lands for depots and other purposes.
77-9-177.	Crossing, intersecting, joining or uniting with other railroads.
77-9-179.	Crossing water courses.
77-9-181.	Insuring persons and property.
77-9-183.	General grant of powers.
77-9-185.	How powers are to be exercised.
77-9-187.	Terminal points and direction of line may be changed.
77-9-189.	Adoption and change of gauge.
77-9-191.	Fictitious stock is void.
77-9-193.	Powers of stockholders.

§ 77-9-141. Powers, rights and privileges of railroad corporations.

Except as limited, or otherwise prescribed, by valid federal statutes or lawful regulations made thereunder, every railroad corporation, organized under the provisions of this article, shall have and exercise the powers, rights and privileges set forth in Sections 77-9-143 through 77-9-183.

HISTORY:
Codes, 1892, § 3577; 1906, § 4079; Hemingway's 1917, § 6708; 1930, § 6072; 1942, § 7723.

Editor's Notes —
Sections 77-9-143 and 77-9-163, referred to in this section were repealed by Laws of 1997, ch. 460, §§ 11 and 12, effective from and after July 1, 1997.

Cross References —
Railroad revitalization, see §§ 57-43-1 et seq.

JUDICIAL DECISIONS

1. In general.
Railroad company receives charter on consideration that it will perform its duties and fulfill obligations incurred. Estes v. Memphis & C. R. Co., 152 Miss. 814, 119 So. 199, 1928 Miss. LEXIS 259 (Miss. 1928).

RESEARCH REFERENCES

Am. Jur.
65 Am. Jur. 2d, Railroads §§ 11 et seq.

CJS.
74 C.J.S., Railroads §§ 47-50.

§ 77-9-143. Repealed.

Repealed by Laws, 1997, ch. 460, § 11, eff from and after July 1, 1997.

[Codes, 1892, § 3578; 1906, § 4080; Hemingway's 1917, § 6709; 1930, § 6073; 1942, § 7724.]

Editor's Notes —
Former § 77-9-143 authorized railroad companies to own and dispose of property.

§ 77-9-145. Suing; having a common seal.

To sue and be sued, to plead and to be impleaded, and to have and use a common seal.

HISTORY:
Codes, 1892, § 3579; 1906, § 4081; Hemingway's 1917, § 6710; 1930, § 6074; 1942, § 7725.

Cross References —
Prohibition against attorney general or member of his staff representing any railroad corporation, see § 73-3-51.

§ 77-9-147. Building and operating railroad.

To build and construct, and thereafter to use, operate, own, sell, and enjoy the railroad as specified and defined in the application of the projectors for its creation and organization, with one or more tracks, and to construct and operate such branches, spurs, and laterals thereto as may be necessary or proper to develop the country through which its main line may extend. Upon the location of branches, spurs, or laterals, the company shall file in the Office of the Secretary of State a written statement showing the line thereof.

HISTORY:
Codes, 1892, § 3580; 1906, § 4082; Hemingway's 1917, § 6711; 1930, § 6075; 1942, § 7726.

Cross References —
Another section derived from same 1942 code section, see § 77-9-149.

RESEARCH REFERENCES

Am. Jur.
65 Am. Jur. 2d, Railroads §§ 97 et seq.

CJS.
74 C.J.S., Railroads §§ 105 et seq.

§ 77-9-149. Collecting charges for transportation of persons and property.

To charge and collect reasonable compensation for the transportation of persons and property on its road.

HISTORY:
Codes, 1892, § 3580; 1906, § 4082; Hemingway's 1917, § 6711; 1930, § 6075; 1942, § 7726.

§ 77-9-151. Issuing stocks and bonds.

To issue any part of its stock as preferred stock, and to fix the relative rights of common and preferred stock, and to issue such bonds and obligations as it may from time to time determine.

HISTORY:
Codes, 1892, § 3582; 1906, § 4084; Hemingway's 1917, § 6713; 1930, § 6077; 1942, § 7729.

RESEARCH REFERENCES

CJS.
74 C.J.S., Railroads §§ 38-41.

§ 77-9-153. Increasing capital stock; issuing preferred stock to satisfy obligations.

To increase, from time to time, its capital stock, but never to exceed the amounts actually expended by the railroad company in constructions, completions, equipments, and additions to its railroad and property; a stockholder shall not be liable for the debts of the corporation beyond the sum due for unpaid subscriptions.

To issue preferred stock and fix the face value of each share at such amount as shall be determined by the board of directors, for the purpose of satisfying, paying and retiring the outstanding bonds, notes, secured or unsecured, or any other evidence of obligations of any kind or character, which obligations have been or shall be incurred by the railroad corporation.

HISTORY:
Codes, 1892, § 3581; 1906, § 4083; Hemingway's 1917, § 6712; 1930, § 6076; 1942, § 7727; Laws, 1938, ch. 347.

RESEARCH REFERENCES

ALR.
Rights of preferred stockholders as to past or accumulated dividends in going concern. 27 A.L.R.2d 1073.

CJS.
74 C.J.S., Railroads §§ 38-41.

§ 77-9-155. Determining number of directors, officers and agents; prescribing compensation, duties and terms thereof.

To determine the number of directors, and of officers and agents under them, and to fix the compensation and prescribe the duties of each, and the terms of office of each.

HISTORY:
Codes, 1892, § 3583; 1906, § 4085; Hemingway's 1917, § 6714; 1930, § 6078; 1942, § 7730.

§ 77-9-157. Authorizing appointment of executive committee.

To authorize the directors to appoint an executive committee, with full power to act in their stead and place at all times when they are not in session.

HISTORY:
Codes, 1892, § 3584; 1906, § 4086; Hemingway's 1917, § 6715; 1930, § 6079; 1942, § 7731.

§ 77-9-159. Opening books of subscription; calling stockholders' meetings.

To open books of subscription for the capital stock of the company, and to call meetings of the stockholders for the election of directors and the performance of such other business as may be proper.

HISTORY:
Codes, 1892, § 3585; 1906, § 4087; Hemingway's 1917, § 6716; 1930, § 6080; 1942, § 7732.

RESEARCH REFERENCES

CJS.
74 C.J.S., Railroads §§ 38-41.

§ 77-9-161. Mortgaging; securing mortgage bonds.

To mortgage or convey in trust, from time to time, any or all of its property, real, personal, and mixed, then owned or thereafter to be acquired, and also all or any of its rights, powers, privileges, liberties, immunities, or franchises, whether then owned, possessed, and enjoyed or thereafter to be acquired, including its right to be a corporation; and under such deed or deed in trust or mortgage, to secure, execute, and dispose of the mortgage bonds of the company to such amounts and maturing at such times and bearing such lawful interest as it may deem best; and to secure, in like manner or in any other way, the bonds and obligations of any other railroad company.

HISTORY:
Codes, 1892, § 3586; 1906, § 4088; Hemingway's 1917, § 6717; 1930, § 6081; 1942, § 7733.

RESEARCH REFERENCES

CJS.
74 C.J.S., Railroads §§ 513 et seq.

§ 77-9-163. Repealed.

Repealed by Laws, 1997, ch. 460, § 12, eff from and after July 1, 1997.

[Codes, 1892, § 3587; 1906, § 4089; Hemingway's 1917, § 6718; 1930, § 6082; 1942, § 7734.]

Editor's Notes —
Former § 77-9-163 provided that the Public Service Commission give consent for the consolidation of railroad corporations.

§ 77-9-165. Leasing railroad and its properties.

To lease, except to parallel or competing lines, its railroad and all of its property and franchises, rights, powers, privileges, and immunities then owned or thereafter to be acquired, for a term of years, and to lease, except from parallel or competing lines, other railroads, in or out of this state for a term of years.

HISTORY:
Codes, 1892, § 3588; 1906, § 4090; Hemingway's 1917, § 6719; 1930, § 6083; 1942, § 7735.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Liability of lessee.

1. In general.
Railroad cannot voluntarily lease road, without legislative permission, and escape performance of duties or obligations. Estes v. Memphis & C. R. Co., 152 Miss. 814, 119 So. 199, 1928 Miss. LEXIS 259 (Miss. 1928).

2. Liability of lessee.
Lessee of railroad will be held liable alone for tort committed in operation thereof, unless lease was in fact without authority of law. Estes v. Memphis & C. R. Co., 152 Miss. 814, 119 So. 199, 1928 Miss. LEXIS 259 (Miss. 1928).

RESEARCH REFERENCES

Am. Jur.
65 Am. Jur. 2d, Railroads §§ 166 et seq.
15 Am. Jur. Legal Forms 2d, Railroads §§ 217:5 through 217:12.

CJS.
74 C.J.S., Railroads §§ 409-411 et seq.

§ 77-9-167. Doing an express or telegraph business.

To do an express business over its own line or lines of railroad; to acquire and put up, use, and operate a line or lines of telegraph along its lines; and to acquire, hold, and enjoy all such property as may be proper, necessary, or convenient in doing such express or telegraph business.

HISTORY:
Codes, 1892, § 3589; 1906, § 4091; Hemingway's 1917, § 6720; 1930, § 6084; 1942, § 7736.

RESEARCH REFERENCES

Am. Jur.
65 Am. Jur. 2d, Railroads §§ 13 et seq.

§ 77-9-169. Having right of way generally.

To enter upon all lands, and to survey, lay out, and construct a railroad thereon. However, before so doing, it must contract and agree with the owner upon the price to be paid for the land or its use, or with the administrator, executor, or guardian in case the owner be dead, be an infant, or person of unsound mind. If an agreement cannot be made it must condemn and acquire the same by the exercise of the right of eminent domain as provided in Chapter 27, Title 11, of the Mississippi Code of 1972.

HISTORY:
Codes, 1892, § 3591; 1906, § 4093; Hemingway's 1917, § 6722; 1930, § 6086; 1942, § 7738.

Cross References —
Power of corporation having right to condemn to make preliminary examinations and surveys, see § 11-27-39.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Nature of right of way.

1. In general.
Railroad held organized under railroad corporation statute, and thus empowered to exercise eminent domain rights, though application for charter stated purpose was to haul freight only within state. Robinson Land & Lumber Co. v. Avera & N. E. R. Co., 157 Miss. 700, 128 So. 738, 1930 Miss. LEXIS 334 (Miss. 1930).

2. Nature of right of way.
Under charter granted by legislature authorizing railroad company to acquire fee-simple title to right of way, with power of eminent domain, it was not mandatory that the railroad company take from landowners deeds in fee simple to the right of way, but it could accept deeds to an easement only. Williams v. Patterson, 198 Miss. 120, 21 So. 2d 477, 1945 Miss. LEXIS 174 (Miss. 1945).

RESEARCH REFERENCES

ALR.
Mandatory injunction prior to hearing of case. 15 A.L.R.2d 213.
Spur track and the like as constituting a use for which railroad can validly exercise right of eminent domain. 35 A.L.R.2d 1326.

Am. Jur.
65 Am. Jur. 2d, Railroads §§ 34 et seq.
21 Am. Jur. Pl & Pr Forms (Rev), Railroads, Forms 72, 88 (Determining route of right-of-way – Complaint, petition, or declaration – To quiet title – By private landowners against railroad company – Unused and unnecessary right of way).

CJS.
74 C.J.S., Railroads §§ 146 et seq.

§ 77-9-171. Having right of way over state lands.

To enter upon, acquire, and enjoy a right of way over and across any lands belonging to the state, the same not to exceed in width one hundred (100) feet, and the same not to be appropriated or used except when the actual construction of the road has reached such state lands.

HISTORY:
Codes, 1892, § 3590; 1906, § 4092; Hemingway's 1917, § 6721; 1930, § 6085; 1942, § 7737.

Cross References —
Authority for legislature to grant rights of way as easements to railroads across state lands, see Miss Const § 95.

JUDICIAL DECISIONS

1. In general.
The policy of the state evidenced by this provision, is to encourage the development of public utilities. City Council of Greenville v. Thomas, 241 Miss. 633, 131 So. 2d 659, 1961 Miss. LEXIS 382 (Miss. 1961).

§ 77-9-173. Entering upon land adjacent to its right of way.

To enter upon land adjacent to its right of way for the purpose of making, or repairing, or changing the railroad, and to cut, quarry, dig, take, and carry away any stone, wood, gravel, earth, or other materials which may be necessary. However, in all such cases it shall make compensation to the owner as agreed upon, or upon condemnation as provided in Chapter 27, Title 11, of the Mississippi Code of 1972.

HISTORY:
Codes, 1892, § 3592; 1906, § 4094; Hemingway's 1917, § 6723; 1930, § 6087; 1942, § 7739.

§ 77-9-175. Acquiring lands for depots and other purposes.

To agree and contract for the acquisition of, or to exercise the right of eminent domain to condemn, lands necessary for depots or other necessary and proper purposes.

HISTORY:
Codes, 1892, § 3593; 1906, § 4095; Hemingway's 1917, § 6724; 1930, § 6088; 1942, § 7740.

§ 77-9-177. Crossing, intersecting, joining or uniting with other railroads.

To cross, intersect, join, or unite its railroad with any other railroad heretofore or hereafter constructed at any points on its route, and upon the ground of such other railroad company, with the necessary and proper turnouts, sidings, switches, and other conveniences, and to exercise the right of eminent domain for that purpose.

HISTORY:
Codes, 1892, § 3594; 1906, § 4096; Hemingway's 1917, § 6725; 1930, § 6089; 1942, § 7741.

JUDICIAL DECISIONS

1. In general.
Since congress has taken complete control of the subject of connections of railroads in interstate commerce, the state cannot compel such connections in the absence of authorization by the Alabama & V. R. Co. v. Jackson & E. R. Co., 144 Miss. 702, 110 So. 865, 1927 Miss. LEXIS 376 (Miss. 1927).

RESEARCH REFERENCES

Am. Jur.
65 Am. Jur. 2d, Railroads §§ 134 et seq.

CJS.
74 C.J.S., Railroads §§ 278-280 et seq.

§ 77-9-179. Crossing water courses.

To construct, maintain, or operate its railroad under, over, and across any and all streams or bodies of water, whether navigable or not, which lie along or across its route, and to erect, use, and maintain bridges over the same; however, whenever a navigable stream or body of water is crossed by a bridge, there shall be maintained a draw or swing in the bridge sufficient to allow the passage of boats and water craft; and to establish such transfers, landings, wharves, approaches, and inclines as may be convenient or necessary in transferring by boat or other water craft its freight, passengers, cars, and rolling stock, loaded or unloaded, upon and across any river or body of water; and to own, use, operate, and control, of itself or with others, all such steamboats, transfer boats, ferries, or water craft, as are or may be convenient in crossing such water or plying therein so as to develop trade over its line of railroad.

HISTORY:
Codes, 1892, § 3595; 1906, § 4097; Hemingway's 1917, § 6726; 1930, § 6090; 1942, § 7742.

Cross References —
Constitutional prohibition against obstructions of navigable waters not preventing construction of drawbridges for railroads, see Miss Const § 81.

Definition of "navigable waters," see § 1-3-31.

RESEARCH REFERENCES

Am. Jur.
65 Am. Jur. 2d, Railroads §§ 114 et seq., 131 et seq.

CJS.
74 C.J.S., Railroads §§ 384 et seq.

§ 77-9-181. Insuring persons and property.

To insure persons and property, or either, transported or to be transported over its railroad, and all property coming or about to come into its possession or control for the purpose of transportation or incident thereto, or for storage in any of its depots, storage houses or wharves.

HISTORY:
Codes, 1892, § 3596; 1906, § 4098; Hemingway's 1917, § 6727; 1930, § 6091; 1942, § 7743.

§ 77-9-183. General grant of powers.

To do and perform all and everything necessary to the exercise of the powers expressed in this article, and to the accomplishment of the objects of its creation and organization, including the exercise of the right of eminent domain as provided in Chapter 27, Title 11, of the Mississippi Code of 1972.

HISTORY:
Codes, 1892, § 3597; 1906, § 4099; Hemingway's 1917, § 6728; 1930, § 6092; 1942, § 7744.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction and maintenance relating to right of way.

1. In general.
Railroad held organized under railroad corporation statute, and thus empowered to exercise eminent domain rights, though application for charter stated purpose was to haul freight only within state. Robinson Land & Lumber Co. v. Avera & N. E. R. Co., 157 Miss. 700, 128 So. 738, 1930 Miss. LEXIS 334 (Miss. 1930).

2. Construction and maintenance relating to right of way.
Defendant railroad company in constructing road bed causing stream to leave its usual channel on plaintiff's land at high water, and break into excavation on its right of way, could erect barriers so as to turn the stream back into its channel although plaintiff's land was thereby injured. Yazoo & M. V. R. Co. v. Brown, 99 Miss. 88, 54 So. 804, 1910 Miss. LEXIS 19 (Miss. 1910).

A railroad company having the right to do all acts incidental to the maintenance of its railroad may lay conduits under the surface of its right of way to conduct water to its buildings although in doing so they pass under the streets of a municipality. Mayor, etc., of Canton v. Canton Cotton Warehouse Co., 84 Miss. 268, 36 So. 266, 1904 Miss. LEXIS 39 (Miss. 1904).

§ 77-9-185. How powers are to be exercised.

The powers conferred in Sections 77-9-141 through 77-9-183 are to be exercised by a board of directors and the officers, agents, and employees under them.

HISTORY:
Codes, 1892, § 3598; 1906, § 4100; Hemingway's 1917, § 6729; 1930, § 6093; 1942, § 7745; Laws, 1938, ch. 347.

Editor's Notes —
Sections 77-9-143 and 77-9-163, referred to in this section, were repealed by Laws, 1997, ch. 460, §§ 11 and 12, eff from and after July 1, 1997.

§ 77-9-187. Terminal points and direction of line may be changed.

A railroad company chartered under this article may, after beginning the construction of its road, make all necessary or proper changes in its course or direction from that specified in the application for its incorporation, and may, with the consent of the Public Service Commission, change its terminal point.

HISTORY:
Codes, 1892, § 3599; 1906, § 4101; Hemingway's 1917, § 6730; 1930, § 6094; 1942, § 7746.

JUDICIAL DECISIONS

1. In general.
This section [Code 1942, § 7746] does not authorize a new railroad which consolidates with an existing railroad to form a through line to abandon a portion of the existing line and construct the through line over another route. State v. Mobile, J. & K. C. R. Co., 86 Miss. 172, 38 So. 732, 1905 Miss. LEXIS 78 (Miss. 1905), aff'd, 210 U.S. 187, 28 S. Ct. 650, 52 L. Ed. 1016, 1908 U.S. LEXIS 1503 (U.S. 1908).

§ 77-9-189. Adoption and change of gauge.

All railroads hereafter constructed in this state may adopt such gauge for their respective roads as the stockholders may determine.

Any railroad company, the gauge of whose road is not the standard, may change the gauge to the standard gauge whenever a majority of the capital stock of the company, voted at any regular meeting of the stockholders, may direct.

HISTORY:
Codes, 1880, § 1064; 1892, §§ 3570, 3571; 1906, §§ 4071, 4072; Hemingway's 1917, §§ 6700, 6701; 1930, §§ 6095, 6096; 1942, §§ 7747, 7748.

§ 77-9-191. Fictitious stock is void.

A railroad corporation shall not issue stocks or bonds except for money, labor done or in good faith agreed to be done, or property actually received. Any fictitious increase of stock or indebtedness shall be void.

HISTORY:
Codes, 1892, § 3600; 1906, § 4102; Hemingway's 1917, § 6731; 1930, § 6100; 1942, § 7752.

§ 77-9-193. Powers of stockholders.

The board of directors is to be subject to the stockholders of the railroad company, who may meet as often as they shall determine. The stockholders may remove any or all of the directors from office, elect others, and vacate and annul any by-laws, order, or rule established or ordinance passed by the directors.

HISTORY:
Codes, 1892, § 3598; 1906, § 4100; Hemingway's 1917, § 6729; 1930, § 6093; 1942, § 7745; Laws, 1938, ch. 347.

SAFETY

Sec.
77-9-221. Repealed.
77-9-223. Exception to requirement of headlights.
77-9-225. Locomotives to give warning when approaching crossings; penalty.
77-9-227. Freight cars shall not be placed in rear of passenger cars; penalty.
77-9-229. Backing into or along a passenger depot; penalty.
77-9-231. Repealed.
77-9-233. Exception to requirement of pilots and headlights.
77-9-235. Obstructing highways and streets; penalty.
77-9-236. Obstructing highways and streets; criminal responsibility of crew complying with orders of employer.
77-9-237. Speed limit in cities.
77-9-239. Repealed.
77-9-241 and 77-9-243. Repealed.
77-9-245. Inclosures around depots.
77-9-247. Railroads shall erect "railroad crossbuck.".
77-9-248. Installation of crossbuck as present signs are replaced.
77-9-249. Obedience to signal indicating approach of train; penalties.
77-9-250. Operation Lifesaver Program; purpose; Operation Lifesaver Fund created; sources of funds.

Sec.	
77-9-251.	Highway crossings and bridges.
77-9-252.	Railroad grade crossings; private entity to pay cost of installation under certain circumstances.
77-9-253.	Stock-gaps and cattle-guards; crossing for plantation roads; penalty.
77-9-254.	Removal by railroad companies of vegetation at railroad right-of-way grade crossings; specifications; inspections by Department of Transportation; fines; damages.
77-9-255.	Repealed.
77-9-257.	Inspection of railroads.
77-9-259.	Repealed.
77-9-261.	Failure to submit to inspection; penalties.
77-9-263.	Repealed.
77-9-265 and 77-9-267.	Repealed.

§ 77-9-221. Repealed.

Repealed by Laws, 1992, ch. 496, § 72, eff from and after July 1, 1992.

[Codes, Hemingway's 1917, §§ 6680, 6681; 1930, §§ 6110, 6111; 1942, §§ 7762, 7763; Laws, 1912, ch. 153; 1940, ch. 171]

Editor's Notes —

Former § 77-9-221 required headlights on locomotives at certain times.

§ 77-9-223. Exception to requirement of headlights.

Section 77-9-221 shall not apply:

(a) to tramroads, mill roads and roads engaged principally in lumber or logging transportation in connection with mills;

(b) to railroad systems under thirty miles long which do not run regular night schedules;

(c) to any engine, the lighting equipment of which shall have failed during a trip, provided that it be shown that the equipment was in efficient and effective working condition when the trip was begun; or

(d) to switch engines going to and returning from wrecks, or sent out on a main line to bring into a terminal a train, the engine of which has become disabled.

HISTORY:

Codes, Hemingway's 1917, § 6682; 1930, § 6112; 1942, § 7764; Laws, 1912, ch. 153.

Editor's Notes —

Section 77-9-221, referred to in this section, was repealed by Laws of 1992, ch. 496, § 72, eff from and after July 1, 1992.

§ 77-9-225. Locomotives to give warning when approaching crossings; penalty.

Every railroad company shall cause each locomotive engine run by it to be provided with a bell of at least thirty (30) pounds weight and with a whistle or horn which can be heard distinctly at a distance of three hundred (300) yards, and shall cause the bell to be rung or the whistle or horn to be blown at the distance of at least three hundred (300) yards from the place where the railroad crosses over any public highway or municipal street. The bell shall be kept ringing continuously or the whistle or horn shall be kept blowing at repeated intervals until said crossing is passed.

Every person, company or corporation violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than Fifty Dollars ($50.00) or be imprisoned not more than thirty (30) days, or be both so fined and imprisoned, in the discretion of the court.

The provisions of this section shall be enforced by the Mississippi Department of Transportation.

HISTORY:
Codes, 1930, §§ 6125, 6126; 1942, §§ 7777, 7778; Laws, 1924, ch. 320; Laws, 1952, ch. 332; Laws, 1992, ch. 496, § 61, eff from and after July 1, 1992.

Cross References —
Mississippi Department of Transportation, see § 65-1-2.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

I. IN GENERAL.

1. In general.
2. Persons or things protected.
3. Duty to give warning.
4. Proximate cause.
5. —Injury from frightening horses.

II. PRACTICE AND PROCEDURE.

6. Pleading.
7. Evidence.
8. Defenses.
9. —Contributory negligence.
10. Instructions.
11. Questions for jury.

I. IN GENERAL.

1. In general.

This section [Code 1942, § 7777] does not apply to a diesel-drawn train. Palisi v. Louisville & N. R. Co., 226 F. Supp. 651, 1964 U.S. Dist. LEXIS 8382 (S.D. Miss. 1964), aff'd, 342 F.2d 799, 1965 U.S. App. LEXIS 6044 (5th Cir. Miss. 1965).

The statutory duty imposed by this section [Code 1942, § 7777] extends to a crossing open to and used by the public for a period of years, with the acquiescence of the railroad company. Illinois C. R. Co. v. McDaniel, 246 Miss. 600, 151 So. 2d 805, 1963 Miss. LEXIS 486 (Miss. 1963).

This section [Code 1942, § 7777] does not apply only to cases of actual collision at crossings but was intended to apply to all cases of injury at crossings directly traceable to the failure to ring the bell, etc., as the proximate cause of the injury. Illinois C. R. Co. v. Armstrong, 93 Miss. 583, 47 So. 427, 1908 Miss. LEXIS 133 (Miss. 1908).

2. Persons or things protected.

This section [Code 1942, § 7777] is inapplicable in the case of one struck while sitting on the end of a crosstie near a path crossing the tracks. Stapleton v. Louisville & Nashville R. Co., 265 F.2d 738, 1959 U.S. App. LEXIS 4056 (5th Cir. Miss. 1959).

Statute regarding sounding whistle and bell at crossing held inapplicable, where plaintiff was injured by frightened team while unloading railroad car, since statute was enacted for the benefit of travelers on the highway or street. Gulf, M. & N. R. Co. v. Hardy, 151 Miss. 131, 117 So. 536, 1928 Miss. LEXIS 299 (Miss. 1928).

Person using depot premises for own pleasure cannot complain of want of crossing signals or mere negligence. Yazoo & M. V. R. Co. v. Cox, 132 Miss. 564, 97 So. 7, 1923 Miss. LEXIS 89 (Miss. 1923).

This section [Code 1942, § 7777] does not apply to motor cars used by section hands. Yazoo & M. V. R. Co. v. Day, 120 Miss. 296, 82 So. 148, 1919 Miss. LEXIS 88 (Miss. 1919).

Code 1892, § 4547 held for protection of animals as well as persons. Young v. Illinois C. R. Co., 88 Miss. 446, 40 So. 870, 1906 Miss. LEXIS 144 (Miss. 1906).

3. Duty to give warning.

Travelers on a highway have a right to insist that the signals required by this section [Code 1942, § 7777] be given, not only that they may be warned thereby to keep off the tracks, but that they may extricate themselves and their property from a position of danger before the arrival of a train. Archer v. Gulf, M. & O. R. Co., 186 So. 2d 470, 1966 Miss. LEXIS 1314 (Miss. 1966).

Where the driver of an automobile, when within 50 feet of a railroad crossing, saw a locomotive about 100 feet away approaching at a speed of four or five miles per hour, and, after coming practically to a stop, proceeded upon the crossing at about ten miles per hour, and the automobile was struck by the locomotive, failure to give the statutory warning did not render the railroad liable for damages to the automobile, since under the circumstances warning was not necessary. Gulf, M. & O. R. Co. v. Baggett, 193 Miss. 356, 8 So. 2d 246, 1942 Miss. LEXIS 99 (Miss. 1942).

Where a motorist, by his own admission, saw railroad cars occupying the crossing for a distance of from 150 to 200 feet, the warning required by this section [Code 1942, § 7777] was not necessary, since the occupancy of the crossing by a railroad train was a sufficient warning within itself of the presence of the cars on the crossing. Gulf, M. & N. R. Co. v. Addkison, 189 Miss. 301, 194 So. 593, 1940 Miss. LEXIS 96 (Miss. 1940).

In absence of "peculiar environment," railroad had no duty to give warning upon or at crossing over which flat cars were passing in addition to signals required by statute. Spilman v. Gulf & S. I. R. Co., 173 Miss. 725, 163 So. 445, 1935 Miss. LEXIS 256 (Miss. 1935).

Under statute requiring locomotive to sound warning signal at public crossing until crossing is passed, no duty is imposed to give signal warning so that it may be heard for greater distance than 300 yards from crossing, and crossing is "passed" when it has become entirely occupied by train, whereupon obligation to continue signals no longer exists. Spilman v. Gulf & S. I. R. Co., 173 Miss. 725, 163 So. 445, 1935 Miss. LEXIS 256 (Miss. 1935).

Occupancy of entire crossing by railroad train is "sufficient" warning within itself of presence of cars, including flat cars, on crossing, and statutory duty to sound signals no longer exists. Spilman v. Gulf & S. I. R. Co., 173 Miss. 725, 163 So. 445, 1935 Miss. LEXIS 256 (Miss. 1935).

4. Proximate cause.

Summary judgment against wrongful death action granted; record contained uncontroverted evidence that bell on the train was rung continuously from a distance of more than 300 yards before railroad crossing where it struck decedent's car. In addition, any failure to sound the whistle or other warning, or any malfunction of the equipment, did not proximately cause the accident, for the evidence showed that the wife was aware of the train, and tried to pass in front of it. Wilson v. Kan. City S. Ry. Co., 276 F. Supp. 2d 614, 2003 U.S. Dist. LEXIS 14177 (S.D. Miss. 2003).

Engineer's failure to give statutory warning at proper distance from crossing where view was obstructed, held properly found to be proximate negligence proximately causing a collision with an automobile. Illinois C. R. Co. v. McDaniel, 246 Miss. 600, 151 So. 2d 805, 1963 Miss. LEXIS 486 (Miss. 1963).

The failure to ring the bell or blow the whistle would not of itself impose liability for an accident at a crossing, it being necessary to a cause of action for negligence for such failure to show that it was the proximate, or a contributing, cause of the accident, and where the evidence showed that a locomotive hauling a long freight train was equipped with an electric light producing a radiance for a distance of not less than 150 to 200 feet in the drizzling rain, and the roar of the train was distinctly heard a mile and a half away, was struck by a motor truck at a crossing along a stretch of track plainly visible for a quarter of a mile, and the plaintiff truck driver claimed to have been unaware of the approaching train until he was within 4 or 5 feet of it, the plaintiff was not entitled to judgment, it not being shown that the failure to ring the bell or blow the whistle was the proximate or a contributing cause of the accident. New Orleans & N. E. R. Co. v. Burge, 191 Miss. 303, 2 So. 2d 825, 1941 Miss. LEXIS 160 (Miss. 1941).

Violation of statute requiring trains to sound bell or whistle on approaching highway intersection is negligence on part of railroad, and, if such negligence is proximate cause of injury, railroad is liable. Mississippi C. R. Co. v. Smith, 173 Miss. 507, 154 So. 533, 159 So. 562, 1934 Miss. LEXIS 390 (Miss. 1934).

5. —Injury from frightening horses.

Railroad company failing to give statutory signals on approaching crossing and frightening team nearby resulting in injury to it and wagon held liable for damages. Skipwith v. Mobile & O. R. Co., 95 Miss. 50, 48 So. 964, 1909 Miss. LEXIS 253 (Miss. 1909).

Railroad held liable for injuries to traveler at crossing caused by team becoming frightened at steam escaping from engine, where railroad failed to give statutory signals although engineer stopped engine before reaching crossing and thereby avoided collision. Illinois C. R. Co. v. Armstrong, 93 Miss. 583, 47 So. 427, 1908 Miss. LEXIS 133 (Miss. 1908).

Where plaintiff drove his team close to tracks without knowledge of approaching train, and was injured when his team became frightened, verdict for plaintiff on ground that negligence of train in failing to give signals was proximate cause of the accident, held warranted. Louisville & N. R. Co. v. Crominarity, 86 Miss. 464, 38 So. 633, 1905 Miss. LEXIS 67 (Miss. 1905).

II. PRACTICE AND PROCEDURE.

6. Pleading.

Variance between declaration alleging railroad's failure to give statutory crossing signals, and proof of failure to give common-law warning to trespasser on tracks after notice of danger, held not to require reversal. Young v. Columbus & G. R. Co., 165 Miss. 287, 147 So. 342, 1933 Miss. LEXIS 302 (Miss. 1933).

Though administrator's amended declaration based cause of action solely on allegation that railroad violated Code requiring warnings on approaching public crossing, notices filed by railway company under plea of general issue showed that railroad company was aware that case was actually to proceed on common-law liability for failure to give warning to trespasser on its tracks after railroad had become aware of the danger, and entire course of trial showed that railway was in no way surprised or misled by the amended declaration, and no demurrer was interposed to amended declaration, and no objection was made to testimony on ground of variance. Young v. Columbus & G. R. Co., 165 Miss. 287, 147 So. 342, 1933 Miss. LEXIS 302 (Miss. 1933).

7. Evidence.

Railroad was properly granted summary judgment dismissing appellants' negligence claims, as the evidence established that the train was traveling below the speed limit, that the crew kept a proper lookout, that the train's whistle blew 900 feet before the crossing as required by statute, and that the emergency brake was activated before impact, and appellants did not support their claim that the railroad failed to clear vegetation near crossing or to maintain an adequate crossing warning system. Estate of Bloodworth v. Ill. Cent. R.R. Co., 129 So. 3d 888, 2013 Miss. LEXIS 588 (Miss. 2013).

In a personal injury case arising from a collision at a railroad crossing in which it was undisputed that the train's bell was sounded continuously in excess of 6000 feet prior to the crossing, while the crossing was occupied, and remained on even after the accident, that far exceeded the requirements of Miss. Code Ann. § 77-9-225. Joiner v. AMTRAK, 2008 U.S. Dist. LEXIS 38753 (S.D. Miss. Mar. 25, 2008).

Jury's verdict that railroad was not liable for death of individual in railroad crossing accident was supported by evidence that train was ringing its bell and blowing its horn upon approaching railroad crossing. Slay v. Illinois C. G. R. Co., 511 So. 2d 875, 1987 Miss. LEXIS 2495 (Miss. 1987).

In an action by the wife and children of decedent, who was killed when his truck was hit by a train at a crossing, against the railroad and the train's engineer, the jury's verdict for the plaintiffs was against the overwhelming weight of the evidence where three witnesses, not employees of the railroad, had testified that the train blew its whistle and rang its bell at or near a whistle post 900 feet from the crossing, such testimony corroborating that of the engineer and the fireman, and where plaintiffs' witnesses had testified merely that they heard the whistle more or less concurrently with the collision (though one witness suggested he thought he might have heard an earlier warning) and they did not testify affirmatively that there had been no prior whistle or bell soundings. Illinois C. G. R. Co. v. Yates, 334 So. 2d 364, 1976 Miss. LEXIS 1923 (Miss. 1976).

Failure to give statutory signals, held not established by testimony of witnesses that they did not hear them, where others testified that they were given. New Orleans & N. R. Co. v. Burney, 248 Miss. 290, 159 So. 2d 85, 1963 Miss. LEXIS 395 (Miss. 1963).

In an action for wrongful injury and death to a child who was killed when automobile in which he was riding was struck by a train at a grade-crossing, testimony of witnesses, who were so situated that in the ordinary course of events they would have heard statutory signals if they had been sounded, that the signals were not given, was sufficient to warn the jury in finding that such signals were not given despite the positive testimony of the train crew. Louisville & N. R. Co. v. Whisenant, 214 Miss. 421, 58 So. 2d 908, 1952 Miss. LEXIS 485 (Miss. 1952).

When a person is injured or killed on a public railroad crossing, the failure to ring the bell or sound the whistle as required by this section [Code 1942, § 7777] will raise the presumption prima facie that the injured person would have heard and acted upon the warning had it been given, and that if an opposite conclusion is to be reached the burden is upon the railroad company to meet the presumption by proof. New Orleans & N. E. R. Co. v. Miles, 197 Miss. 846, 20 So. 2d 657, 1945 Miss. LEXIS 316 (Miss. 1945).

Refusal of the court to permit a witness to answer the question whether he would have heard the bell if it had been ringing, was erroneous since the question did not call for mere matter of opinion. Heafner v. Columbus & G. R. Co., 185 Miss. 773, 190 So. 1, 1939 Miss. LEXIS 195 (Miss. 1939).

Testimony by person in position to hear that train whistle was not blown and bell was not rung at crossing warranted jury's finding that bell was not rung and whistle not blown. Columbus & G. R. Co. v. Lee, 149 Miss. 543, 115 So. 782, 1928 Miss. LEXIS 73 (Miss. 1928).

8. Defenses.

Where visual stimulation is present to warn a motorist of a train's presence and the impending danger, and in response to such stimulus he does see it, failure to blow the locomotive's horn or ring its bell is of little significance. New Orleans & N. R. Co. v. Weary, 217 So. 2d 274, 1968 Miss. LEXIS 1260 (Miss. 1968).

The statutory presumption of negligence was held to have been overcome by testimony that the train and its appliances were in good order, that the warning signals required by this section [Code 1942, § 7777] were given, that the engineer did not see deceased on railroad right of way until about 240 feet away, and immediately applied brakes. Dickerson v. Illinois C. R. Co., 244 Miss. 733, 145 So. 2d 913, 1962 Miss. LEXIS 503 (Miss. 1962).

Automobilist's failure to stop at crossing held no defense to action based on railroad's failure to blow whistle or ring bell. New Orleans & N. E. R. Co. v. Hegwood, 155 Miss. 104, 124 So. 66, 1929 Miss. LEXIS 262 (Miss. 1929).

That giving of statutory crossing signals would not have prevented automobile being blocked on track did not relieve railroad of necessity of giving signals. Gulf & S. I. R. Co. v. Simmons, 150 Miss. 506, 117 So. 345, 1928 Miss. LEXIS 182 (Miss. 1928).

9. —Contributory negligence.

Although motorist's failure to stop before attempting to cross railroad tracks constituted negligence contributing to the collision between his automobile and a switch engine, trial court properly refused to grant to railroad company a peremptory instruction where there were jury questions as to whether the proximate cause of the accident was the failure of the railroad to ring the bell on its engine, or the failure of the engineer to stop when he saw that the motorist was not going to. New Orleans & N. R. Co. v. Ready, 238 Miss. 199, 118 So. 2d 185, 1960 Miss. LEXIS 396 (Miss. 1960).

Under this statute proof of contributory negligence does not entitle the defendant to the direction of a verdict. Louisville & N. R. Co. v. Wickton, 55 F.2d 642, 1932 U.S. App. LEXIS 3779 (5th Cir. Miss. 1932).

Passenger injured by making of kicking switch after he had boarded train, held not guilty of contributory negligence because he boarded train after time for its departure from depot had arrived. Yazoo & M. V. R. Co. v. Roberts, 88 Miss. 80, 40 So. 481, 1906 Miss. LEXIS 108 (Miss. 1906).

10. Instructions.

In a case where the decedent was struck and killed by a train, the trial court properly instructed the jury regarding the railroad company's duty to warn of a train's approach in light of the statutory guidelines in Miss. Code Ann. § 77-9-225. Clark v. Ill. Cent. R.R., 872 So. 2d 773, 2004 Miss. App. LEXIS 423 (Miss. Ct. App. 2004).

Since this section [Code 1942, § 7777] does not require both signals to be given, it was reversible error, in an action arising out of a collision between a switch engine and an automobile at a street crossing, to instruct that a railroad, in operation of trains where the track crosses a municipal street, is required to give a signal or alarm 300 yards before reaching the street crossing by ringing its bell and blowing its whistle. New Orleans & N. R. Co. v. Ready, 238 Miss. 199, 118 So. 2d 185, 1960 Miss. LEXIS 396 (Miss. 1960).

An instruction in an action against a railroad for death of an automobile passenger arising from a collision at a railroad crossing, to the effect that there could be no recovery against the railroad because of any alleged failure on its part to equip its locomotive with such a bell and whistle as the law required, was erroneous where one of the principal issues was whether the bell had been rung continuously for a distance of 900 feet before the crossing and until the locomotive had passed the crossing, and the evidence failed to disclose whether the train was equipped with a bell and the declaration was silent with respect thereto. Heafner v. Columbus & G. R. Co., 185 Miss. 773, 190 So. 1, 1939 Miss. LEXIS 195 (Miss. 1939).

Instruction relative to railroad's duty to give crossing signals authorizing recovery on negligent failure to do so held not misleading. Gulf & S. I. R. Co. v. Simmons, 150 Miss. 506, 117 So. 345, 1928 Miss. LEXIS 182 (Miss. 1928).

Instruction that law presumes statutory signals were given held ground for reversal, where evidence on issue was conflicting. Grantham v. Gulf & S. I. R. Co., 138 Miss. 360, 103 So. 131, 1925 Miss. LEXIS 53 (Miss. 1925).

Instruction confining negligence to that alleged does not cure instruction permitting recovery for negligence not contributing to injuries. Hines v. McCullers, 121 Miss. 666, 83 So. 734, 1920 Miss. LEXIS 112 (Miss. 1920).

In view of evidence instruction that if road was a highway, defendant railroad's servants were negligent in not ringing bell at crossing, held erroneous. Gulf & S. I. R. Co. v. Adkinson, 117 Miss. 118, 77 So. 954, 1918 Miss. LEXIS 155 (Miss. 1918).

Instruction that company approaching crossing, failing to ring bell and blow whistle, was negligent held proper in action against railroad company for killing cattle. Southern R. Co. v. Murray, 91 Miss. 546, 44 So. 785, 1907 Miss. LEXIS 135 (Miss. 1907).

Instruction that company failing to ring bell and blow whistle on approaching crossing as required by law was negligent, held proper. Southern R. Co. v. Murray, 91 Miss. 546, 44 So. 785, 1907 Miss. LEXIS 135 (Miss. 1907).

11. Questions for jury.

In a personal injury action arising when the decedent's van was struck by a train at a railroad crossing, the trial court's directed verdict for the railroad would be reversed where the questions of negligence in failing to give the signal required by statute and proximate cause were appropriate for determination by the jury. Walker v. Louisville & N. R. Co., 571 F.2d 866, 1978 U.S. App. LEXIS 11589 (5th Cir. Miss. 1978).

Where there was conflicting testimony as to whether auditory warnings were made as required by this section [Code 1942, § 7777], the questions of negligence and proximate cause were for the jury. New Orleans & N. R. Co. v. Weary, 217 So. 2d 274, 1968 Miss. LEXIS 1260 (Miss. 1968).

The question of whether the warning signals required by this section [Code 1942, § 7777] were sounded is squarely within the province of the jury to determine, and it is likewise the function of the jury to determine whether a railroad's failure to give the required signals was the proximate cause of the plaintiff's injuries. Archer v. Gulf, M. & O. R. Co., 186 So. 2d 470, 1966 Miss. LEXIS 1314 (Miss. 1966).

The testimony of a witness, riding in his truck at night at 50 miles per hour and going in the opposite direction from a train which struck a stalled automobile at a crossing, that he did not hear the locomotive engineer sound either bell or whistle when approaching the crossing was sufficient to take the wrongful death action to the jury, as against a requested peremptory instruction. New Orleans & N. R. Co. v. Phillips, 252 Miss. 438, 172 So. 2d 414, 1965 Miss. LEXIS 1118 (Miss. 1965).

In a death action arising out of a collision between decedent's truck and defendant's freight train at a railroad crossing, conflicting testimony as to the speed of the train and as to the giving of the statutory signals, when considered in connection with the alleged obstruction of the decedent's view by a packing shed, depot building, and two box cars along the west side of the packing shed, all tending to show that the decedent could not have seen the train even by exercising reasonable care until he was in the act of crossing the track, presented an issue of fact for the jury as to whether or not the negligence of the defendant railroad company was a concurring or contributing cause of the accident. Illinois C. R. Co. v. Sanders, 229 Miss. 139, 90 So. 2d 366, 1956 Miss. LEXIS 595 (Miss. 1956), overruled, Sheffield v. Sheffield, 405 So. 2d 1314, 1981 Miss. LEXIS 2053 (Miss. 1981).

Where there was conflicting testimony as to whether warning signals of an approach of a train were given, this was sufficient to take the case to the jury on a question of liability of railroad for the death of passenger when automobile in which she was riding was struck by freight train at grade crossing. Gulf, M. & O. R. Co. v. White, 219 Miss. 342, 68 So. 2d 458, 1953 Miss. LEXIS 394 (Miss. 1953).

In an action for wrongful injury and death of a boy of the age of twelve years who was killed when automobile in which he was riding was struck at a grade-crossing by train, questions as to whether the statutory warning signals were given and as to whether the failure to give such signals directly and proximately caused or contributed to the injury and death of decedent, and as to whether the driver of the car saw the train and attempted to beat the train across the crossing were factual issues to be determined by the jury. Louisville & N. R. Co. v. Whisenant, 214 Miss. 421, 58 So. 2d 908, 1952 Miss. LEXIS 485 (Miss. 1952).

In action for death of motorist struck by train at crossing, whether railroad gave statutory signals held for jury. Yazoo & M. R. Co. v. Pittman, 169 Miss. 667, 153 So. 382, 1934 Miss. LEXIS 60 (Miss. 1934).

Railroad's negligence in failing to give statutory signals before reaching crossing and striking automobile held for jury. Gulf & S. I. R. Co. v. Simmons, 150 Miss. 506, 117 So. 345, 1928 Miss. LEXIS 182 (Miss. 1928).

In action for death of motorist killed at crossing, whether railroad was negligent and whether negligence caused death held for jury. Columbus & G. R. Co. v. Lee, 149 Miss. 543, 115 So. 782, 1928 Miss. LEXIS 73 (Miss. 1928).

Whether crossing signals were given held for jury. Gulf & S. I. R. Co. v. Carlson, 137 Miss. 613, 102 So. 168, 1924 Miss. LEXIS 210 (Miss. 1924).

Whether railroad company overcame prima facie case held question for the jury. Young v. Illinois C. R. Co., 88 Miss. 446, 40 So. 870, 1906 Miss. LEXIS 144 (Miss. 1906).

RESEARCH REFERENCES

ALR.

Railroad lookout statutes as applicable to switching operations. 1 A.L.R.2d 621.

Customary or statutory signal from train as measure of railroad's duty as to warning at highway crossing. 5 A.L.R.2d 112.

Am. Jur.

65 Am. Jur. 2d, Railroads § 210.

21 Am. Jur. Pl & Pr Forms (Rev), Railroads, Contributory negligence of pedestrians on tracks, Forms 143 et seq. (signs and warning signals), 169 et seq.

10 Am. Jur. Proof of Facts 1, Railroads.

18 Am. Jur. Proof of Facts 2d 611, Extrahazardous Nature of Railroad Crossing – Obstruction of View.

27 Am. Jur. Proof of Facts 2d 471, Unreasonable Speed of Train at Railroad Crossing.

37 Am. Jur. Proof of Facts 2d 439, Inadequacy of Warning Device at Railroad Crossing.

CJS.

74 C.J.S., Railroads §§ 816-818.

§ 77-9-227. Freight cars shall not be placed in rear of passenger cars; penalty.

In forming a passenger train, freight or merchandise or lumber cars shall not be placed in the rear of passenger cars. If they, or any of them, shall be so placed and any accident happens to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars nor more than five hundred dollars. This section shall not apply where railroad trains are carrying personnel and equipment in connection with military or naval movements.

HISTORY:

Codes, 1906, § 4044; Hemingway's 1917, § 6668; 1930, § 6113; 1942, § 7765; Laws, 1942, ch. 273.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

CJS.

74 C.J.S., Railroads § 790, 791.

§ 77-9-229. Backing into or along a passenger depot; penalty.

It shall be unlawful to back a train of cars, or part of a train, or an engine into or along a passenger depot at a greater rate of speed than three (3) miles an hour. Every such train, part of a train, or engine backing into or along a passenger depot, and within fifty (50) feet thereof, shall, for at least three hundred (300) feet before it reaches or comes opposite to such depot, be preceded by a servant of the railroad company on foot, not exceeding forty (40) nor under twenty (20) feet in advance, to give warning. For every injury inflicted by a railroad company while violating this section, the party injured may recover full damages without regard to mere contributory negligence.

A failure to observe this section shall cause a railroad company to be liable to a fine of fifty dollars ($50.00) for each offense.

HISTORY:

Codes, 1871, § 2423; 1880, § 1049; 1892, §§ 3549, 3551; 1906, §§ 4047, 4049; Hemingway's 1917, §§ 6671, 6673; 1930, §§ 6119, 6128; 1942, §§ 7771, 7780.

Cross References —

Manslaughter occasioned by ignorant or negligent management of train, see § 97-3-43.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Persons protected.
3. "Passenger depot."
4. Proximate cause.
5. Defenses; contributory negligence.

1. In general.

This section [Code 1942, § 7771] was intended to protect human life and should not be restricted by interpretation. Illinois C. R. Co. v. Causey, 106 Miss. 36, 63 So. 336, 1913 Miss. LEXIS 107 (Miss. 1913).

Carrier held under no duty to back train to destination of passenger on her demand after carrying her beyond it. Yazoo & M. V. R. Co. v. Hardie, 100 Miss. 132, 55 So. 42, 1911 Miss. LEXIS 91 (Miss. 1911).

The phrase "within fifty feet thereof" refers to the distance from the depot to the nearest point of the track on which the train is backing. Yazoo & M. V. R. Co. v. Metcalf, 84 Miss. 242, 36 So. 259, 1904 Miss. LEXIS 35 (Miss. 1904).

The statute was designed to compel railroads to observe a new rule of care and watchfulness in backing trains within fifty feet of a passenger depot and to afford protection to all persons within the prescribed limits. Illinois C. R. Co. v. McCalip, 76 Miss. 360, 25 So. 166, 1898 Miss. LEXIS 131 (Miss. 1898); Alabama & V. R. Co. v. Carter, 77 Miss. 511, 27 So. 993, 1899 Miss. LEXIS 100 (Miss. 1899).

2. Persons protected.

Failure of railroad to comply with statutory requirement that servant precede backing train to give warning held not to warrant recovery by one who fell under cars while walking alongside backing train. Yazoo & M. V. R. Co. v. Green, 167 Miss. 137, 147 So. 333, 1933 Miss. LEXIS 97 (Miss. 1933).

No person can successfully claim benefit of warning statute, where he had as complete information of train's approach as if warned. Yazoo & M. V. R. Co. v. Green, 167 Miss. 137, 147 So. 333, 1933 Miss. LEXIS 97 (Miss. 1933).

One injured while attempting to pass through opening of about six feet in train after he saw that portion had begun to move towards the other part was not within the statute. Sledge v. Yazoo & M. V. R. Co., 87 Miss. 566, 40 So. 13, 1905 Miss. LEXIS 169 (Miss. 1905).

This section [Code 1942, § 7771] is not restricted in its application to a particular class of persons but allows a recovery to such persons as are mere licensees on the railroad property. It is a regulation intended to preserve and protect human life and limb which should not be restricted by strained interpretation; It was intended to afford protection to all persons injured within three hundred feet of a passenger depot and the phrase "within fifty feet thereof" refers solely to the question of whether or not the track on which the train is backing comes within the stated distance of the depot. Yazoo & M. V. R. Co. v. Metcalf, 84 Miss. 242, 36 So. 259, 1904 Miss. LEXIS 35 (Miss. 1904).

3. "Passenger depot."

"Passenger depot" includes all passage ways, walkways or platforms prepared for passengers in boarding or leaving trains so that railroad company was liable where backing engine killed one opposite platform extending from depot building for over 180 feet along track. Illinois C. R. Co. v. Causey, 106 Miss. 36, 63 So. 336, 1913 Miss. LEXIS 107 (Miss. 1913).

4. Proximate cause.

Railroad's violation of statute by backing train along passenger depot in excess of three miles per hour must be proximate cause of injury to warrant injured person's recovery therefor. Yazoo & M. V. R. Co. v. Green, 167 Miss. 137, 147 So. 333, 1933 Miss. LEXIS 97 (Miss. 1933).

Railroad's violation of statute by backing train along passenger depot in excess of three miles per hour held as matter of law not proximate cause of injury to one walking alongside train who stumbled and fell under cars. Yazoo & M. V. R. Co. v. Green, 167 Miss. 137, 147 So. 333, 1933 Miss. LEXIS 97 (Miss. 1933).

5. Defenses; contributory negligence.

Locomotive engineer of one railroad held to have an absolute right to recover for injuries incurred when he was forced to jump from his engine by another road negligently backing cars down upon him, regardless of his contributory negligence in going upon crossing without stopping. Mobile & O. R. Co. v. Campbell, 114 Miss. 803, 75 So. 554, 1917 Miss. LEXIS 87 (Miss. 1917).

This section [Code 1942, § 7771] held not repealed, altered, or modified by contributory negligence statute (Code 1942, § 1454). Mobile & O. R. Co. v. Campbell, 114 Miss. 803, 75 So. 554, 1917 Miss. LEXIS 87 (Miss. 1917).

Railroad company not complying with this section [Code 1942, § 7771] in backing car which killed decedent held liable though decedent was guilty of contributory negligence. Illinois C. R. Co. v. Archer, 113 Miss. 158, 74 So. 135, 1916 Miss. LEXIS 37 (Miss. 1916).

One injured while attempting to pass through opening of about six feet in train after he saw that portion had begun to move towards the other part, was not within statute, since provision against contributory negligence as a defense is not available to one whose injuries are the result of his own voluntary, deliberate, wilful, or reckless exposure of himself. Sledge v. Yazoo & M. V. R. Co., 87 Miss. 566, 40 So. 13, 1905 Miss. LEXIS 169 (Miss. 1905).

§ 77-9-231. Repealed.

Repealed by Laws, 1992, ch 496, § 72, eff from and after July 1, 1992.

[Codes, Hemingway's 1917, §§ 7695, 7697, 7698; 1930, §§ 6120, 6121; 1942, §§ 7772, 7773; Laws, 1908, ch. 95]

Editor's Notes —

Former § 77-9-231 required pilots and headlights on engines being backed at night.

§ 77-9-233. Exception to requirement of pilots and headlights.

Section 77-9-231 shall not apply:

(a) to railroads whose principal business is hauling logs;

(b) to locomotive engines running for coal or water, doubling hills, returning from trains when broken into, or going to or returning from trains in the yard limits of terminal stations;

(c) to engines engaged in regular switching service in yards or road engines switching at intermediate stations; or

(d) to any locomotive engines in cases of washouts, wrecks, or when going to the assistance of engines so disabled as to block the main track of a railroad.

HISTORY:

Codes, Hemingway's 1917, § 7696; 1930, § 6122; 1942, § 7774; Laws, 1908, ch. 95.

Editor's Notes —

Section 77-9-231 referred to in this section was repealed by Laws of 1992, ch. 496, § 72, eff from and after July 1, 1992.

§ 77-9-235. Obstructing highways and streets; penalty.

Every railroad company, upon stopping any train at a place where such railroad shall cross a highway, shall so uncouple its cars as not to obstruct travel upon such highway for a longer period than five (5) minutes. Every railroad company shall, upon stopping a train at a place where the railroad is crossed by a street, so uncouple the cars as not to obstruct travel thereon for a longer period than shall be prescribed by ordinance of the city, town or village. A failure to observe this section shall cause a railroad company to be liable to a fine of Fifty Dollars ($50.00) for each offense. The conductor in charge of any train so violating the provisions of this section shall be liable to a fine of not less than Twenty-five Dollars ($25.00) nor more than Fifty Dollars ($50.00), on conviction thereof.

The provisions of this section shall be enforced by the Mississippi Department of Transportation.

HISTORY:

Codes, 1871, § 2423; 1880, § 1049; 1892, § 3551; 1906, § 4049; Hemingway's 1917, § 6673; 1930, § 6128; 1942, § 7780; Laws, 1992, ch. 496, § 62, eff from and after July 1, 1992.

Cross References —

Mississippi Department of Transportation, see § 65-1-2.

Obstruction of public highway, road, or navigable water by felling tree or bush, see § 65-7-7.

Criminal responsibility of crew complying with orders of employer for obstruction of highways and streets, see § 77-9-236.

Criminal offense of stopping or leaving standing locomotives or trains on railroad crossings, see § 97-25-37.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Obstruction of highway as negligence.
3. Liability for obstruction.
4. Proximate cause.
5. Evidence.
6. Questions for jury.
7. Instructions.

1. In general.

The word "highway" relates alone to highways in the country. Illinois C. R. Co. v. State, 71 Miss. 253, 14 So. 459, 1893 Miss. LEXIS 180 (Miss. 1893).

2. Obstruction of highway as negligence.

Railroad which allowed gondola car to extend partly on traveled portion of highway which was unnecessary to railroad's business of transportation held negligent as regards railroad's liability for death of motorist whose automobile collided with car. Magers v. Okolona, H. & C. C. R. Co., 174 Miss. 860, 165 So. 416, 1936 Miss. LEXIS 201 (Miss. 1936).

Railroad company habitually parking cars so as to block crossing held guilty of negligence per se. Jarrell v. New Orleans & N. E. R. Co., 109 Miss. 49, 67 So. 659, 1915 Miss. LEXIS 111 (Miss. 1915).

Railroad company blocking highway crossing with freight cars for most of night and part of next day held negligent. Southern R. Co. v. Floyd, 99 Miss. 519, 55 So. 287, 1911 Miss. LEXIS 222 (Miss. 1911).

3. Liability for obstruction.

Traveler may recover damages sustained by reason of crossing being blocked by trains for 45 minutes. Illinois C. R. Co. v. Engle, 102 Miss. 878, 60 So. 1, 1912 Miss. LEXIS 131 (Miss. 1912).

One detained is justified in momentarily expecting the obstruction to be removed as the law requires and if he be made sick by unreasonable detention in inclement weather, may recover damages; It does not lie for the company to say that he should have yielded to its unlawful conduct and sought shelter. Louisville, N. O. & T. R. Co. v. Durfree, 69 Miss. 439, 13 So. 697, 1891 Miss. LEXIS 148 (Miss. 1891).

Where train was left standing for about an hour with a part of it extending three and a half feet into the street at a crossing, railroad was liable for any damage directly traceable to such wrongful obstruction. Vicksburg & M. R. Co. v. Alexander, 62 Miss. 496, 1885 Miss. LEXIS 89 (Miss. 1885).

4. Proximate cause.

Where railroad company habitually blocked crossing, and while it was so blocked, a boy, attempting to crawl under cars about 100 yards from crossing, was killed when a locomotive without signal or warning ran into the cars, held that negligent blocking of the crossing directly contributed to the boy's death. Jarrell v. New Orleans & N. E. R. Co., 109 Miss. 49, 67 So. 659, 1915 Miss. LEXIS 111 (Miss. 1915).

5. Evidence.

In such suit plaintiff had burden of showing that village had an ordinance prescribing time of stoppage of train. Owen v. Anderson, 119 Miss. 66, 80 So. 386, 1918 Miss. LEXIS 10 (Miss. 1918).

Where plaintiff was injured climbing over between box cars obstructing crossing, averment that crossing had been blocked for more than five minutes was a material fact to be proven. Owen v. Anderson, 119 Miss. 66, 80 So. 386, 1918 Miss. LEXIS 10 (Miss. 1918).

To recover damages to health because of an obstruction of travel in violation of the statute, the plaintiff should show (a) that the road obstructed was a highway, a public road; (b) that plaintiff himself was detained by the train for more than five minutes; (c) that the detention caused the ill health complained of. Anderson v. Alabama & V. R. Co., 81 Miss. 587, 33 So. 840, 1902 Miss. LEXIS 207 (Miss. 1902).

6. Questions for jury.

In a wrongful death action arising out of a collision between an automobile in which decedent was riding and defendant's train at a railroad crossing on a foggy night, under conflicting evidence, the question of whether the alleged negligence of the railroad company in blocking the crossing for a period of more than five minutes in violation of Code 1942, § 7780 was the effective cause of the accident, or whether the accident was due solely to the negligence of the driver of the car, was for the jury. Green v. Gulf, M. & O. R. Co., 244 Miss. 211, 141 So. 2d 216, 1962 Miss. LEXIS 442 (Miss. 1962).

Whether plaintiff sustained additional injury because physician visiting her was delayed by train blocking crossing was for the jury. Terry v. New Orleans G. N. R. Co., 103 Miss. 679, 60 So. 729, 1912 Miss. LEXIS 216 (Miss. 1913).

Negligence of plaintiff injured by stepping in hole while walking around cars unlawfully blocking crossing held for jury. Southern R. Co. v. Floyd, 99 Miss. 519, 55 So. 287, 1911 Miss. LEXIS 222 (Miss. 1911).

Where plaintiff, after waiting for about twenty minutes, attempted to lead his horse and buggy across a crossing and past a train partially blocking the crossing, and the horse became frightened and ran away, breaking the buggy, he was not guilty of such contributory negligence as would deprive him of his right of action for the injury sustained, and it was properly left to the jury to determine whether he should recover. Vicksburg & M. R. Co. v. Alexander, 62 Miss. 496, 1885 Miss. LEXIS 89 (Miss. 1885).

7. Instructions.

In action to recover damages for fire loss caused by defendant's train blocking street in municipality so as to prevent fire department from putting out fire, instruction that law prohibits railroad company from stopping train at places where it crosses street within the city limits for more than five minutes did not mislead jury, although such instruction left uncertain whether it based liability entirely on the state statute which has been held inapplicable to streets in municipalities, or on a combination of the statute and the city ordinances, since the case was tried on the theory of the negligence of defendant in violating the municipal ordinances. New Orleans & N. R. Co. v. Bryant, 209 Miss. 193, 46 So. 2d 433, 1950 Miss. LEXIS 379 (Miss. 1950).

RESEARCH REFERENCES

ALR.

Liability of railroad for injury due to road vehicle running into train or car standing on highway crossing. 84 A.L.R.2d 813.

Liability of railroad or other private landowner for vegetation obscuring view at railroad crossing. 66 A.L.R.4th 885.

Am. Jur.

65 Am. Jur. 2d, Railroads § 187.

18 Am. Jur. Proof of Facts 2d 611, Extrahazardous Nature of Railroad Crossing – Obstruction of View.

CJS.

74 C.J.S., Railroads § 787.

§ 77-9-236. Obstructing highways and streets; criminal responsibility of crew complying with orders of employer.

No member of a train crew, yard crew or engine crew of a railroad which is a common carrier shall be held criminally responsible or found guilty of violating any state laws or of any municipal ordinances regulating or intended to regulate the blocking of any street, road or highway grade crossings by trains or passenger or freight cars upon reasonable proof that the blocking of said street, road or highway grade crossings was necessary to comply with the orders or instructions, either written or oral, of his employer or its officers or supervisory officials; provided, however, that the provisions of this section shall not relieve the employer or railroad from any responsibility placed upon said employee or railroad by any such state laws or by such municipal ordinances; and provided further, that the employer or railroad shall stand in the place of the member of the train crew, yard crew or engine crew in such circumstances and shall be responsible for the violation of any such state laws or municipal ordinances and any criminal fines resulting therefrom.

The provisions of this section shall be enforced by the Mississippi Department of Transportation.

HISTORY:
Laws, 1975, ch. 314; Laws, 1992, ch. 496, § 63, eff from and after July 1, 1992.

Cross References —
Mississippi Department of Transportation, see § 65-1-2.

Obstruction of highways and streets by railroads and the penalty therefor, see § 77-9-235.

Criminal offense of stopping or leaving standing locomotives or trains on railroad crossings, see § 97-25-37.

§ 77-9-237. Speed limit in cities.

Any railroad company having the right of way may run locomotives and cars by steam through cities and towns, at the rate of thirty miles an hour and no more. The company shall be liable for any damages or injury which may be sustained by any one from such locomotive or cars whilst they are running at a greater speed than thirty miles an hour through any city or town. The public service commission shall have power to fix and prescribe limits in cities and towns in which railroad companies may run locomotives and cars by steam at a greater rate than thirty miles an hour, and whenever it shall have fixed and prescribed such limits in any city or town this section shall not thereafter apply to the running of cars and locomotives by steam within the same.

HISTORY:
Codes, 1857, ch. 35, art. 36; 1871, § 2421; 1880, § 1074; 1892, § 3546; 1906, § 4043; Hemingway's 1917, § 6667; 1930, § 6130; 1942, § 7782; Laws, 1896, p. 76; Laws, 1938, ch. 329.

Cross References —
Manslaughter occasioned by ignorant or negligent management of train, see § 97-3-43.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Regulation by commission.
4. Persons entitled to right of action.
5. Rate of speed as negligence.
6. Liability for injury or damage.
7. Proximate cause.
8. Contributory negligence.
9. Evidence.
10. Questions for jury.
11. Instructions.
12. Damages.

1. In general.
Statute limiting speed of trains in municipalities is intended to prevent injuries and death, and, to such end, to enable crew operating train to stop within a short distance. Gulf & S. I. R. Co. v. Bond, 181 Miss. 254, 179 So. 355, 181 So. 741, 1938 Miss. LEXIS 67 (Miss. 1938), overruled, Illinois C. R. Co. v. Nelson, 245 Miss. 395, 146 So. 2d 69, 1963 Miss. LEXIS 527, 1963 Miss. LEXIS 547, 1962 Miss. LEXIS 560 (Miss. 1962), overruled in part, Illinois C. R. Co. v. Nelson, 245 Miss. 411, 148 So. 2d 712 (Miss. 1963).

There is no fixed rule as to the rate of speed at which a hand car may be run even at street crossings. McCerren v. Alabama & V. R. Co., 72 Miss. 1013, 18 So. 420, 1895 Miss. LEXIS 48 (Miss. 1895).

The legislature can rightfully regulate the speed of trains in passing through cities, towns and villages, and the exercise of such power does not violate charter rights. Mobile & O. R. Co. v. State, 51 Miss. 137, 1875 Miss. LEXIS 24 (Miss. 1875), overruled, Pittman v. Chrisman, 59 Miss. 124, 1881 Miss. LEXIS 82 (Miss. 1881).

This section [Code 1942, § 7782] refers to incorporated cities, towns and villages only. Illinois C. R. R. Co. v. Jordan, 63 Miss. 458, 1886 Miss. LEXIS 123 (Miss. 1886).

2. Applicability.

A train moving at approximately 40 miles per hour at the time the headlights of the locomotive flashed upon a stalled automobile on a crossing of a rural, gravel road, not within the boundaries of any municipality, was not subject to the 30 mile per hour maximum provided by this section [Code 1942, § New Orleans & N. R. Co. v. Phillips, 252 Miss. 438, 172 So. 2d 414, 1965 Miss. LEXIS 1118 (Miss. 1965).

The prohibitions of this section [Code 1942, § 7782] do not apply to diesel-powered trains. New Orleans & N. R. Co. v. Burney, 248 Miss. 290, 159 So. 2d 85, 1963 Miss. LEXIS 395 (Miss. 1963); Palisi v. Louisville & N. R. Co., 226 F. Supp. 651, 1964 U.S. Dist. LEXIS 8382 (S.D. Miss. 1964), aff'd, 342 F.2d 799, 1965 U.S. App. LEXIS 6044 (5th Cir. Miss. 1965).

This statute is inapplicable in a case in which the locomotive was not run by steam. Stapleton v. Louisville & Nashville R. Co., 265 F.2d 738, 1959 U.S. App. LEXIS 4056 (5th Cir. Miss. 1959).

Statute did not protect motorist struck by swift train partly within municipality's speed limit area. Hancock v. Illinois C. R. Co., 158 Miss. 668, 131 So. 83, 1930 Miss. LEXIS 98 (Miss. 1930).

Law limiting speed of locomotives and cars operated by steam through cities, towns, and villages held inapplicable to train propelled by electricity. Calvert v. Mobile & O. R. Co., 153 Miss. 866, 121 So. 855, 1929 Miss. LEXIS 93 (Miss. 1929).

This section [Code 1942, § 7782] held inapplicable outside of municipal limits. New Orleans & N. E. R. Co. v. Martin, 126 Miss. 765, 89 So. 621, 1921 Miss. LEXIS 77 (Miss. 1921); Hines v. Moore, 124 Miss. 500, 87 So. 1 (Miss. 1921) (ovrld on other grounds by Davis v. Waterman (Miss) 420 So2d 1063).

This section [Code 1942, § 7782] applies only to injuries occurring within corporate limits. Mississippi C. R. Co. v. Butler, 93 Miss. 654, 46 So. 558, 1908 Miss. LEXIS 99 (Miss. 1908).

3. Regulation by commission.

Order of railroad commission regulating speed in municipality held not void for ambiguity. Hines v. Andrews, 124 Miss. 292, 86 So. 801, 1920 Miss. LEXIS 508 (Miss. 1921).

4. Persons entitled to right of action.

The section [Code 1942, § 7782] does not embrace railroad employees among those to whom a right of action is given. Gulf, M. & N. R. Co. v. Walters, 161 Miss. 313, 134 So. 831, 1931 Miss. LEXIS 248 (Miss. 1931); Dowell v. Vicksburg & M. R. R. Co., 61 Miss. 519, 1884 Miss. LEXIS 123 (Miss. 1883).

5. Rate of speed as negligence.

Violation of statute limiting speed of train, in absence of contrary railroad commission rule, is negligence. Gulf & S. I. R. Co. v. Bond, 181 Miss. 254, 179 So. 355, 181 So. 741, 1938 Miss. LEXIS 67 (Miss. 1938), overruled, Illinois C. R. Co. v. Nelson, 245 Miss. 395, 146 So. 2d 69, 1963 Miss. LEXIS 527, 1963 Miss. LEXIS 547, 1962 Miss. LEXIS 560 (Miss. 1962), overruled in part, Illinois C. R. Co. v. Nelson, 245 Miss. 411, 148 So. 2d 712 (Miss. 1963).

Engineer traveling in excess of statutory rate in municipality, seeing pedestrian on track, should have slowed to lawful rate, and given alarm. Gulf & S. I. R. Co. v. Bond, 181 Miss. 254, 179 So. 355, 181 So. 741, 1938 Miss. LEXIS 67 (Miss. 1938), overruled, Illinois C. R. Co. v. Nelson, 245 Miss. 395, 146 So. 2d 69, 1963 Miss. LEXIS 527, 1963 Miss. LEXIS 547, 1962 Miss. LEXIS 560 (Miss. 1962), overruled in part, Illinois C. R. Co. v. Nelson, 245 Miss. 411, 148 So. 2d 712 (Miss. 1963).

Where a train running at a much greater rate of speed than that allowed in a much frequented part of the city and without giving signals strikes a pedestrian going in the same direction, the company is reckless amounting to wilfulness and the party injured may recover regardless of whether he was rightfully or wrongfully on the track. Stevens v. Yazoo & M. V. R. Co., 81 Miss. 195, 32 So. 311, 1902 Miss. LEXIS 106 (Miss. 1902).

The statute may be invoked by a trespasser but the speed must be the cause of the injury. Alabama & V. R. Co. v. Carter, 77 Miss. 511, 27 So. 993, 1899 Miss. LEXIS 100 (Miss. 1899).

Running at a less rate of speed is not always lawful; Whether running at a given rate of speed less than six miles an hour is negligence or not must be determined by the circumstances of each case. Alabama & V. R. Co. v. Phillips, 70 Miss. 14, 11 So. 602, 1892 Miss. LEXIS 57 (Miss. 1892).

The statute does not confer the right to run six miles an hour where under all circumstances the exercise of a reasonable caution would require that they be run more slowly. Memphis & C. R. Co. v. Jobe, 69 Miss. 452, 10 So. 672, 1891 Miss. LEXIS 86 (Miss. 1891);

Louisville, N. O. & T. R. Co. v. French, 69 Miss. 121, 12 So. 338, 1891 Miss. LEXIS 113 (Miss. 1891).

It is no defense of itself that at the moment of collision the train was running less than six miles an hour. Illinois C. R. R. Co. v. Jordan, 63 Miss. 458, 1886 Miss. LEXIS 123 (Miss. 1886).

If a locomotive be running through a city at a rate less than six miles an hour when animals jump into a trestle and render a collision inevitable, the speed may be increased, notwithstanding the law, in order to strike with such momentum as to knock them off and avoid throwing the train from the bridge. Chicago, S. L. & N. O. R. Co. v. Jones, 59 Miss. 465, 1882 Miss. LEXIS 136 (Miss. 1882).

Under the section [Code 1942, § 7782], a railroad company is liable for stock killed by its locomotive running in a town at a greater speed than six miles an hour although the engine be checked when the animal is seen and strike it when running at a less rate. New Orleans, M. & T. R. Co. v. Toulme, 59 Miss. 284, 1881 Miss. LEXIS 119 (Miss. 1881).

6. Liability for injury or damage.

Word "through" held synonymous with "in" or "within," and covers injury from locomotive switching cars in railroad's private yard. Mississippi C. R. Co. v. Pace, 109 Miss. 667, 68 So. 926, 1915 Miss. LEXIS 209 (Miss. 1915).

Duty of person crossing track and railroad company to exercise care is reciprocal. Illinois C. R. Co. v. Sumrall, 96 Miss. 860, 51 So. 545, 1910 Miss. LEXIS 184 (Miss. 1910).

Railroad company held liable to traveler injured where train was running at unlawful speed when the danger was discovered though at the time of the collision it was running at a lawful speed. Louisville & N. R. Co. v. Dick, 95 Miss. 111, 48 So. 401, 1909 Miss. LEXIS 210 (Miss. 1909).

The fact that an incorporated municipality has only ten families in it, that the authorities have not held a session since the organization, that the mayor has no docket and has never been called on to act, that it has no marshal nor need of one, and that no official bonds have been given by the mayor and aldermen, does not lessen the liability of a railroad company under this section [Code 1942, § 7782]. Bell v. Kansas City, M. & B. R. Co., 9 So. 289 (Miss. 1891).

The section [Code 1942, § 7782] does not make a railroad company liable for injury done by a train running in violation thereof to a person walking on the track without looking or listening for moving engines, where the evidence fails to show that the company's servants saw the person before the accident. Strong v. Canton, A. & N. R. Co., 3 So. 465 (Miss. 1888).

"Scaring a mare," which the engine or train does not strike, is not within the section [Code 1942, § 7782].The injury must be inflicted by "running" of the train. Illinois C. R. Co. v. Weathersby, 63 Miss. 581, 1886 Miss. LEXIS 142 (Miss. 1886).

7. Proximate cause.

To warrant recovery against a railroad for excessive speed, such speed must be the proximate cause of the injury. Yazoo & M. V. R. Co. v. Aultman, 179 Miss. 109, 173 So. 280, 1937 Miss. LEXIS 5 (Miss. 1937); Bufkin v. Louisville & N. R. Co., 161 Miss. 594, 137 So. 517, 1931 Miss. LEXIS 292 (Miss. 1931); Illinois C. R. Co. v. Watson, 39 So. 69 (Miss. 1905); Clisby v. Mobile & O. R. Co., 78 Miss. 937, 29 So. 913, 1901 Miss. LEXIS 147 (Miss. 1901); Alabama & V. R. Co. v. Carter, 77 Miss. 511, 27 So. 993, 1899 Miss. LEXIS 100 (Miss. 1899).

This section [Code 1942, § 7782] does not impose an absolute liability upon railroad where accident occurs while train is being operated at an excessive rate of speed, since speed must be proximate cause of the accident or a contributing proximate cause thereto. Yazoo & M. V. R. Co. v. Aultman, 179 Miss. 109, 173 So. 280, 1937 Miss. LEXIS 5 (Miss. 1937).

Excessive speed of train held not proximate cause of injury to bystander on station platform, who was knocked against train by passenger in attempt to board train; passenger's act being independent, intervening agency. Bufkin v. Louisville & N. R. Co., 161 Miss. 594, 137 So. 517, 1931 Miss. LEXIS 292 (Miss. 1931).

Excessive speed held proximate cause of injury where it could have been avoided if train had been running at lawful rate. Mississippi C. R. Co. v. Robinson, 106 Miss. 896, 64 So. 838, 1914 Miss. LEXIS 36 (Miss. 1914).

Where one wrongfully on a train was injured in voluntarily jumping from it, the company's liability was not affected by the fact that the speed had been wilfully increased beyond the legal rate since there was no causal connection between that act and the injury. Howell v. Illinois C. R. Co., 75 Miss. 242, 21 So. 746, 1897 Miss. LEXIS 95 (Miss. 1897).

A railroad company running its train at a greater speed than fixed by the section [Code 1942, § 7782] is not liable for killing cattle, unless the accident resulted from the excessive speed and whether it did so, is for the jury. Louisville, N. O. & T. R. Co. v. Caster, 5 So. 388 (Miss. 1889).

8. Contributory negligence.

Passenger going to depot to board train scheduled to stop at that very instant may assume that train on parallel track will not be running at an unlawful rate of speed. Illinois C. R. Co. v. Daniels, 96 Miss. 314, 50 So. 721, 1909 Miss. LEXIS 48 (Miss. 1909).

Passenger may assume carrier has exercised highest degree of care in providing for his safety, and when injured whether he was guilty of contributory negligence depends on circumstances surrounding him at the time. Illinois C. R. Co. v. Daniels, 96 Miss. 314, 50 So. 721, 1909 Miss. LEXIS 48 (Miss. 1909).

Traveler held not guilty of contributory negligence where he looked for the train at nearest unobstructed view and was struck at crossing while train was running 40 miles an hour when legal rate was 6. Hopson v. Kansas C., M. & B. R. Co., 87 Miss. 789, 40 So. 872, 1905 Miss. LEXIS 218 (Miss. 1905).

The elimination in the Act of 1896, incorporated in this section [Code 1942, § 7782], of the penalty prescribed in the Code of 1892, does not prevent the defense of contributory negligence. Clisby v. Mobile & O. R. Co., 78 Miss. 937, 29 So. 913, 1901 Miss. LEXIS 147 (Miss. 1901); Farquhar v. Alabama & V. R. Co., 78 Miss. 193, 28 So. 850, 1900 Miss. LEXIS 106 (Miss. 1900); Collins v. Illinois C. R. Co., 77 Miss. 855, 27 So. 837, 1900 Miss. LEXIS 35 (Miss. 1900).

Knowledge by one that a company habitually runs its train at an unlawful speed does not make him guilty of contributory negligence because he did not act on the assumption that the train injuring him would be so run. Hasie v. Alabama & V. R. Co., 78 Miss. 413, 28 So. 941, 1900 Miss. LEXIS 120 (Miss. 1900).

Although a railroad company is per se guilty of negligence and also violates the law, contributory negligence is a defense. Crawley v. Richmond & D. R. Co., 70 Miss. 340, 13 So. 74, 1892 Miss. LEXIS 140 (Miss. 1892).

The section [Code 1942, § 7782] does not deprive the railroad company of showing contributory negligence on plaintiff's part as a defense, and an instruction in the language of the statute is misleading which omits the idea of contributory negligence. Mobile & O. R. Co. v. Stroud, 64 Miss. 784, 2 So. 171, 1887 Miss. LEXIS 105 (Miss. 1887); Vicksburg & M. R. Co. v. McGowan, 62 Miss. 682, 1885 Miss. LEXIS 126 (Miss. 1885).

9. Evidence.

Evidence that excessive speed of train directly and proximately contributed to pedestrian's death, in that pedestrian was unable to get out of the way, supported verdict allowing recovery, notwithstanding evidence of pedestrian's contributory negligence. Gulf & S. I. R. Co. v. Bond, 181 Miss. 254, 179 So. 355, 181 So. 741, 1938 Miss. LEXIS 67 (Miss. 1938), overruled, Illinois C. R. Co. v. Nelson, 245 Miss. 395, 146 So. 2d 69, 1963 Miss. LEXIS 527, 1963 Miss. LEXIS 547, 1962 Miss. LEXIS 560 (Miss. 1962), overruled in part, Illinois C. R. Co. v. Nelson, 245 Miss. 411, 148 So. 2d 712 (Miss. 1963).

A pedestrian on railroad track in municipality, although a trespasser, could assume that the engineer was traveling at the statutory rate of speed. Gulf & S. I. R. Co. v. Bond, 181 Miss. 254, 179 So. 355, 181 So. 741, 1938 Miss. LEXIS 67 (Miss. 1938), overruled, Illinois C. R. Co. v. Nelson, 245 Miss. 395, 146 So. 2d 69, 1963 Miss. LEXIS 527, 1963 Miss. LEXIS 547, 1962 Miss. LEXIS 560 (Miss. 1962), overruled in part, Illinois C. R. Co. v. Nelson, 245 Miss. 411, 148 So. 2d 712 (Miss. 1963).

Evidence held not to show that railroad negligently operated engine which caused fire and death of deceased at an unlawful rate of speed. Yazoo & M. V. R. Co. v. Washington, 113 Miss. 105, 73 So. 879, 1916 Miss. LEXIS 17 (Miss. 1917).

Evidence that a railroad company without giving signals ran an extra train at night at a speed in excess of the lawful rate over frequented street crossings is sufficient to sustain the finding of negligence and a verdict for plaintiff. New Orleans & N. E. R. Co. v. Brooks, 85 Miss. 269, 38 So. 40, 1904 Miss. LEXIS 182 (Miss. 1904).

The section [Code 1942, § 7782] refers to incorporated cities, towns and villages only, and evidence that the accident occurred in an uninhabited part of the town is inadmissible. Illinois C. R. R. Co. v. Jordan, 63 Miss. 458, 1886 Miss. LEXIS 123 (Miss. 1886).

10. Questions for jury.

The question of whether the speed at which a train was travelling constituted negligence under the facts, circumstances, and conditions of a given case is one properly submitted to a jury for determination. Illinois C. R. Co. v. Pilgrim, 220 So. 2d 598, 1969 Miss. LEXIS 1465 (Miss. 1969).

In a death action arising out of a collision between decedent's truck and defendant's freight train at a railroad crossing, conflicting testimony as to the speed of the train and the giving of the statutory signals, when considered in connection with the alleged obstruction of the view of the decedent by a packing shed, depot building, and two box cars along the west side of the packing shed, all tending to show that the decedent could not have seen the train even in the exercise of reasonable care until he was in the act of crossing the tracks, presented an issue for the jury as to whether or not the negligence of the railroad company was a concurring or contributing cause of the accident. Illinois C. R. Co. v. Sanders, 229 Miss. 139, 90 So. 2d 366, 1956 Miss. LEXIS 595 (Miss. 1956), overruled, Sheffield v. Sheffield, 405 So. 2d 1314, 1981 Miss. LEXIS 2053 (Miss. 1981).

Whether injury to automobile left on railroad right of way would not have occurred had locomotive been operated at lawful rate of speed held a question for jury. Brinkley v. Southern R. Co., 113 Miss. 367, 74 So. 280, 1917 Miss. LEXIS 111 (Miss. 1917).

Where there was evidence that a railroad without giving signals ran an extra train at night at a speed in excess of the lawful rate over frequented street crossings, there being a controversy as to the conduct of the deceased, one view of the facts exculpating him from negligence, the question of his contributory negligence was properly left to the jury. New Orleans & N. E. R. Co. v. Brooks, 85 Miss. 269, 38 So. 40, 1904 Miss. LEXIS 182 (Miss. 1904).

Where, although plaintiff attempted to cross over in front of a rapidly moving train, there was evidence that the train was exceeding the lawful rate and that it increased its speed from the point where it was first noticed until it struck plaintiff's wagon, question whether proper diligence on the part of the engineer would have avoided the collision should have been submitted to the jury, notwithstanding plaintiff's contributory negligence. Cottrell v. Southern Ry., 80 Miss. 610, 32 So. 1, 1902 Miss. LEXIS 284 (Miss. 1902).

Where a dog is killed in trying to run under a train going through a town at an unlawful rate of speed, the question whether the injury is attributable to the speed is for the jury. Jones v. Illinois C. R. Co., 75 Miss. 970, 23 So. 358, 1898 Miss. LEXIS 7 (Miss. 1898).

The statute applied in a case in which it was held that a railroad had the right to a clear track only when operating its trains in conformity to the law and that the evidence was such as to require the question of negligence to be submitted to the jury. Alabama & V. R. Co. v. Lowe, 73 Miss. 203, 19 So. 96, 1895 Miss. LEXIS 128 (Miss. 1895).

Whether the accident in which cattle were killed by a train resulted from the operation of the train at an excessive speed was for the jury. Louisville, N. O. & T. R. Co. v. Caster, 5 So. 388 (Miss. 1889).

11. Instructions.

Section 77-9-237 applies only to steam locomotives and not to locomotives operated by diesel fuel or electricity. In a wrongful death action arising from a collision between an automobile and a train not powered by a steam locomotive, an instruction with respect to the speed limit established by this section was prejudicial error. Illinois C. G. Railroad v. Stedman, 344 So. 2d 468, 1977 Miss. LEXIS 2440 (Miss. 1977).

In an action arising from a train-automobile collision, an instruction to the effect that the engineer operating the train had no right under the law to run it across the intersection in question at a greater rate of speed than was reasonably prudent or careful at the time, taking into consideration all of the facts and circumstances, was not erroneous for failing to give the jury any guide to what was a reasonable or prudent rate of speed, where the facts were sufficient to warrant the jury in finding that the intersection was unusually hazardous and that the speed of 52 miles an hour at which the train was proceeding through a town was not a reasonable and prudent rate of speed. Illinois C. R. Co. v. Pilgrim, 220 So. 2d 598, 1969 Miss. LEXIS 1465 (Miss. 1969).

In guest's action against railroad for injuries sustained in collision between automobile and freight train, instruction with respect to liability of railroad if train was operated at speed exceeding six miles per hour in municipality, which omitted qualification that speed must be proximate cause of accident or contributing proximate cause thereto where railroad relied on evidence that speed was not proximate cause of accident, held prejudicial error. Yazoo & M. V. R. Co. v. Aultman, 179 Miss. 109, 173 So. 280, 1937 Miss. LEXIS 5 (Miss. 1937).

In action for railroad brakeman's death, giving instruction based on inapplicable statute forbidding greater train speed than six miles an hour in town held prejudicial error. Gulf, M. & N. R. Co. v. Walters, 161 Miss. 313, 134 So. 831, 1931 Miss. LEXIS 248 (Miss. 1931).

In an action for the loss of property alleged to have been negligently set on fire, an instruction for a railroad company is erroneous which assumes to state its duties under the circumstances but excludes the imputation of negligence arising from the excessive speed at which its train was run. Mississippi Home Ins. Co. v. Louisville, N. O. & T. R. Co., 70 Miss. 119, 12 So. 156, 1892 Miss. LEXIS 99 (Miss. 1892).

12. Damages.

$10,000 to widow and two children aged 1 and 3 years, for death of 24-year-old husband and father earning $12 per week, held excessive by $2,500, decedent's negligence having been greater than negligence of railroad. Gulf & S. I. R. Co. v. Bond, 181 Miss. 254, 179 So. 355, 181 So. 741, 1938 Miss. LEXIS 67 (Miss. 1938), overruled, Illinois C. R. Co. v. Nelson, 245 Miss. 395, 146 So. 2d 69, 1963 Miss. LEXIS 527, 1963 Miss. LEXIS 547, 1962 Miss. LEXIS 560 (Miss. 1962), overruled in part, Illinois C. R. Co. v. Nelson, 245 Miss. 411, 148 So. 2d 712 (Miss. 1963).

RESEARCH REFERENCES

Am. Jur.
65 Am. Jur. 2d, Railroads §§ 206 et seq.
21 Am. Jur. Pl & Pr Forms (Rev), Railroads, High and dangerous rate of speed, Forms 172, 173.
10 Am. Jur. Proof of Facts 1, Railroads.
27 Am. Jur. Proof of Facts 2d 471, Unreasonable Speed of Train at Railroad Crossing.

CJS.
74 C.J.S., Railroads §§ 784, 785.

§ 77-9-239. Repealed.

Repealed by Laws, 1997, ch. 460, § 13, eff from and after July 1, 1997.

[Codes, 1892, § 4317; 1906, § 4871; Hemingway's 1917, § 7656; 1930, § 7084; 1942, § 7860]

Editor's Notes —
Former § 77-9-239 authorized the Public Service Commission to recommend the adoption of uniform automatic car-couplers to railroad companies.

§§ 77-9-241 and 77-9-243. Repealed.

Repealed by Laws, 1992, ch. 496, § 72, eff from and after July 1, 1992.

§ 77-9-241. [Codes, 1892, § 3553; 1906, § 4051; Hemingway's 1917, § 6675; 1930, § 6116; 1942, § 7768; Laws, 1916, ch. 228]

§ 77-9-243. [Codes, 1871, § 2423; 1880, § 1049; 1892, §§ 3548, 3551; 1906, §§ 4046, 4049; Hemingway's 1917, §§ 6670, 6673; 1930, §§ 6118, 6128; 1942, §§ 7770, 7780; Laws, 1976, ch. 303]

Editor's Notes —
Former § 77-9-241 provided for the use of warning strings under specified conditions.

Former § 77-9-243 imposed liability on railroad companies for injuries caused by "flying", "running", "walking" or "kicking" switches.

§ 77-9-245. Inclosures around depots.

A railroad company may erect an inclosure around a depot, where the public safety requires it, to prevent persons other than passengers from coming near the locomotive and cars, and may exclude from within such inclosure all persons except passengers.

HISTORY:
Codes, 1857, ch. 35, art. 40; 1871, § 2426; 1880, § 1052; 1892, § 3554; 1906, § 4052; Hemingway's 1917, § 6676; 1930, § 6117; 1942, § 7769.

JUDICIAL DECISIONS

1. In general.
In an action arising from a collision between a train and a car, which was allegedly caused, in part, by a lack of active protection at a crossing and vegetation that obstructed the view of the operator of the car, the court rejected the railroad's contention that §§ 63-3-303 and 63-3-305 removed any and all responsibility from its shoulders and transfered the duty to the Mississippi Department of Transportation, as §§ 77-9-245, 77-9-247, 77-9-248, 77-9-251, and 77-9-253 all clearly refer to duties of the railroad in the interest of public safety. Kansas City S. Ry. Co. v. Johnson, 798 So. 2d 374, 2001 Miss. LEXIS 26 (Miss.), cert. denied, 534 U.S. 816, 122 S. Ct. 43, 151 L. Ed. 2d 15, 2001 U.S. LEXIS 5524 (U.S. 2001).

RESEARCH REFERENCES

Am. Jur.
65 Am. Jur. 2d, Railroads § 86.

§ 77-9-247. Railroads shall erect "railroad crossbuck."

Every railroad corporation or company or person or persons operating or controlling any railroad track intersecting a public road or street at grade crossings shall erect and maintain at each such crossing the standard sign known as "railroad crossbuck," the design of which has been standardized by the Association of American Railroads and which appears in the "Manual on Uniform Traffic Control Devices" for the State of Mississippi as adopted by the Commissioner of Public Safety, the Mississippi Transportation Commission and the United States Department of Transportation.

Provided, further, that said railroad crossbuck shall be reflectorized and be placed in the right side of the road or street on both sides of the railroad and shall indicate the number of tracks crossing the road or street in accordance with the aforesaid manual on uniform traffic control devices.

The provisions of this section shall be enforced by the Mississippi Department of Transportation.

HISTORY:
Codes, 1930, §§ 6123, 6126; 1942, §§ 7775, 7778; Laws, 1924, ch. 320; Laws, 1974, ch. 525 § 1; Laws, 1992, ch. 496, § 64, eff from and after July 1, 1992.

Cross References —
Stops required by motor vehicles at railroad crossings generally, see Article 21 of Chapter 3 of Title 63.

Mississippi Department of Transportation, see § 65-1-2.

Crossings, see § 65-1-69.

Construction of protective devices at railroad crossings, see § 65-1-70.

Jurisdiction and powers of Department of Transportation with respect to railroad crossings, see § 65-1-175.

Criminal offense of injuring or destroying railroad boards or signs, see § 97-25-5.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence.
3. Questions for jury.
4. Instructions.

1. In general.
In an action arising from a collision between a train and a car, which was allegedly caused, in part, by a lack of active protection at a crossing and vegetation which obstructed the view of the operator of the car, the court rejected the railroad's contention that §§ 63-3-303 and 63-3-305 removed any and all responsibility from its shoulders and transfered the duty to the Mississippi Department of Transportation, as §§ 77-9-245, 77-9-247, 77-9-248, 77-9-251, and 77-9-253 all clearly refer to duties of the railroad in the interest of public safety. Kansas City S. Ry. Co. v. Johnson, 798 So. 2d 374, 2001 Miss. LEXIS 26 (Miss.), cert. denied, 534 U.S. 816, 122 S. Ct. 43, 151 L. Ed. 2d 15, 2001 U.S. LEXIS 5524 (U.S. 2001).

Jury's verdict that railroad was not liable for death of individual involved in railroad crossing accident was supported by there being no indication that railroad acted in violation of statute regarding crossing's maintenance where crossbar had been erected by railroad. Slay v. Illinois C. G. R. Co., 511 So. 2d 875, 1987 Miss. LEXIS 2495 (Miss. 1987).

Where there is a series of railroad tracks parallel and close to each other there is no requirement that a sign should be placed at each of the tracks, one sign 50 feet from the first track being sufficient. New Orleans & N. R. Co. v. Ready, 238 Miss. 199, 118 So. 2d 185, 1960 Miss. LEXIS 396 (Miss. 1960).

All persons are charged with knowledge of the law but not necessarily with knowledge of the meaning of signs not required to be made by law, unless they are familiar with the location of the railroad crossing. Heafner v. Columbus & G. R. Co., 185 Miss. 773, 190 So. 1, 1939 Miss. LEXIS 195 (Miss. 1939).

2. Evidence.

Jury properly found that a railroad did not negligently cause a truck driven by a contract worker to be hit at a crossing because it failed to supply a flagman while obstructions were being cleared from its right-of-way; because the jury found that the crossing was not extrahazardous, Miss. Code Ann. § 77-9-247 merely required the railroad to erect a crossbuck, which it had done. Baker v. Canadian National/Illinois Cent. R.R., 536 F.3d 357, 2008 U.S. App. LEXIS 15178 (5th Cir. Miss. 2008), cert. denied, 555 U.S. 1171, 129 S. Ct. 1317, 173 L. Ed. 2d 585, 2009 U.S. LEXIS 1320 (U.S. 2009).

In a crossing accident case in which the railroad's negligence was predicated on inadequacy of a warning sign, it is error to exclude from evidence a photograph showing what the railroad had done at a similar crossing elsewhere. Cain v. Illinois C. R. Co., 266 F.2d 942, 1959 U.S. App. LEXIS 3819 (5th Cir. Miss.), cert. denied, 361 U.S. 886, 80 S. Ct. 158, 4 L. Ed. 2d 122, 1959 U.S. LEXIS 194 (U.S. 1959).

3. Questions for jury.

In an action against the railroad by a motorist for injury suffered when he collided with a flatcar standing on a public crossing which exact location he did not know because he was looking for a stop sign, evidence of reasonable care of the motorist was for the jury where the motorist proceeded on a dark night over a highway which had a slight dip near the crossing and the railroad did not provide a stop sign or any warning of the presence of the train on the crossing. Boyd v. Illinois C. R. Co., 211 Miss. 409, 52 So. 2d 21, 1951 Miss. LEXIS 372 (Miss. 1951).

4. Instructions.

It was error, in an action for the death of a person who fell or jumped from a truck at a railroad crossing, to instruct the jury peremptorily that the failure of the defendant railroad to maintain the stop sign was negligence, in view of other instructions given to the effect that if the railroad company was guilty of any negligence the jury should find for the plaintiffs, where the proof failed to disclose any causal connection between the failure of the railroad company to maintain the stop sign and the accident complained of, it being shown without dispute that the driver of the truck was thoroughly familiar with the crossing and its location on the highway. Columbus & G. R. Co. v. Robinson, 189 Miss. 675, 198 So. 749, 1940 Miss. LEXIS 163 (Miss. 1940), overruled in part, Hollingsworth v. Bovaird Supply Co., 465 So. 2d 311, 1985 Miss. LEXIS 1942 (Miss. 1985).

An instruction in an action for death of an automobile truck passenger arising from a collision with a railroad train to the effect that regardless of the Mississippi law stop signs, if the railroad maintained another kind of sign in full view of the driver so that in the exercise of ordinary care he knew or should have known that he was approaching a railroad crossing, and if he negligently proceeded across such crossing and such negligence was the sole proximate cause of the injury to the plaintiff's decedent, the verdict should be for the railroad, while not alone reversible error, should not have been given, because allegedly having prescribed a particular sign to warn travelers of a railroad crossing, even though the old sign formerly required might not have been removed, the sign required by law should be placed in accordance with the statute. Heafner v. Columbus & G. R. Co., 185 Miss. 773, 190 So. 1, 1939 Miss. LEXIS 195 (Miss. 1939).

OPINIONS OF THE ATTORNEY GENERAL

Counties are responsible for the installation and maintenance of necessary warning signs and pavement markings at rail crossings on roads under their jurisdiction subject to approval by the State Highway Commission. 2002 Miss. Op. Att'y Gen. 109.

RESEARCH REFERENCES

ALR.

Duty of railroad company to maintain flagman at crossing. 24 A.L.R.2d 1161.

Failure of signaling device at crossing to operate, as affecting railroad company's liability. 90 A.L.R.2d 350.

Am. Jur.

65 Am. Jur. 2d, Railroads §§ 210, 284.

21 Am. Jur. Pl & Pr Forms (Rev), Railroads, Warning devices, Forms 169 et seq.

23 Am. Jur. Trials 1, Railroad Crossing Accident Litigation.

10 Am. Jur. Proof of Facts 1, Railroads.

37 Am. Jur. Proof of Facts 2d 439, Inadequacy of Warning Device at Railroad Crossing.

CJS.

74 C.J.S., Railroads §§ 788-789.

§ 77-9-248. Installation of crossbuck as present signs are replaced.

The crossbuck signs provided for in Section 77-9-247 shall be installed by the corporation, company or persons controlling the railroad as the present signs are replaced.

The provisions of this section shall be enforced by the Mississippi Department of Transportation.

HISTORY:

Laws, 1974, ch. 525, § 3; Laws, 1992, ch. 496, § 65, eff from and after July 1, 1992.

Cross References —

Mississippi Department of Transportation, see § 65-1-2.

JUDICIAL DECISIONS

1. In general.

In an action arising from a collision between a train and a car, which was allegedly caused, in part, by a lack of active protection at a crossing and vegetation which obstructed the view of the operator of the car, the court rejected the railroad's contention that §§ 63-3-303 and 63-3-305 removed any and all responsibility from its shoulders and transfered the duty to the Mississippi Department of Transportation, as §§ 77-9-245, 77-9-247, 77-9-248, 77-9-251, and 77-9-253 all clearly refer to duties of the railroad in the interest of public safety. Kansas City S. Ry. Co. v. Johnson, 798 So. 2d 374, 2001 Miss. LEXIS 26 (Miss.), cert. denied, 534 U.S. 816, 122 S. Ct. 43, 151 L. Ed. 2d 15, 2001 U.S. LEXIS 5524 (U.S. 2001).

RESEARCH REFERENCES

Am. Jur.

37 Am. Jur. Proof of Facts 2d 439, Inadequacy of Warning Device at Railroad Crossing.

§ 77-9-249. Obedience to signal indicating approach of train; penalties.

(1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this subsection, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when one or more of the following circumstances exists:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train; or

(b) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train; or

(c) A railroad train approaching within approximately nine hundred (900) feet of the highway crossing emits a signal in accordance with Section 77-9-225, and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; or

(d) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(2) No person shall drive any vehicle through, around or under any

crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

(3) In the trial of all actions to recover personal injury or property damages, sustained by any driver of such vehicles for collision of said vehicle and train in which action it may appear that the said driver may have violated any of the provisions hereof, the question of whether or not the said violation was the sole or approximate cause of the accident and injury shall be for the jury to determine. The violation of this section shall not of itself defeat recovery, and the question of negligence or the violation aforesaid shall be left to the jury; and the comparative negligence statutes and prima facie statute of this state shall apply in these cases as in other cases of negligence.

(4) At any railroad grade crossing provided with visible railroad crossbuck signs without automatic electric or mechanical signal devices, crossing gates or a human flagman giving a signal of the approach or passage of a train, the driver of a vehicle shall, in obedience to such railroad crossbuck sign, yield the right-of-way and slow to a speed reasonable for the existing conditions, and shall stop if required for safety at a clearly marked stop line, or if no stop line, within fifty (50) feet, but not less than fifteen (15) feet, from the nearest rail of the railroad, and shall not proceed until he can do so safely.

(5) Every person, company or corporation violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Two Hundred Fifty Dollars ($250.00) nor more than Five Hundred Dollars ($500.00), or imprisoned not more than thirty (30) days, or both such fine and imprisonment, in the discretion of the court.

HISTORY:

Codes, 1930, §§ 6124, 6126; 1942, §§ 7776, 7778; Laws, 1924, ch. 320; Laws, 1974, ch. 525, § 2; Laws, 1995, ch. 512, § 1; Laws, 2000, ch. 543, § 1; Laws, 2004, ch. 448, § 2, eff from and after July 1, 2004.

Cross References —

Penalty for employer who knowingly requires, allows, authorizes, etc. driver to operate commercial motor vehicle in violation of this section, see § 63-1-223.

Stops required by motor vehicles at railroad crossings generally, see §§ 63-3-1001 et seq.

Imposition of state assessment in addition to all other state assessments due under § 99-19-73 and all court imposed fines or other penalties for any violation of this section, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Failure of driver to stop.
3. Proximate cause.
4. Evidence.
5. Questions for jury.
6. Jury instructions.
7. Directed verdict.
8. Damages.

1. In general.

While Mississippi legislature in 1974 changed law requiring stop at all railroad crossings to one requiring stop only when train is in hazardous proximity to crossing and is plainly visible, among other enumerated conditions, distance of unobstructed vision is not based upon motorist driving at maximum speed limit without regard to fact that he is approaching railroad crossing; motorist must take such measures as will allow him to come to stop not less than 15 feet from nearest rail. Mitcham v. Illinois C. G. R. Co., 515 So. 2d 852, 1987 Miss. LEXIS 2779 (Miss. 1987).

This section [Code 1942, § 7776] presupposes that a railroad company will not by its own act, except in cases of emergency, so obstruct the view at the crossing that the driver of an automobile will be unable to see an approaching train if he complies with the requirements of the statute and when it becomes necessary to obstruct the view or crossing, it becomes the duty of the railroad's servants in charge of its trains in approaching the crossing to exercise greater caution to avoid striking persons lawfully using the crossing. New Orleans & N. R. Co. v. Lewis, 214 Miss. 163, 58 So. 2d 486, 1952 Miss. LEXIS 456 (Miss. 1952).

Driver of bus need not get out of bus and look and listen for approaching train before entering upon crossing. Mississippi C. R. Co. v. Aultman, 173 Miss. 622, 160 So. 737, 1935 Miss. LEXIS 205 (Miss. 1935).

2. Failure of driver to stop.

Driver did not have a duty to stop at the railroad crossing, and was not negligent per se, when he could not see the approaching train until the last minute due to the railroad's failure to maintain the vegetation in its right of way. Ala. Great S. R.R. Co. v. Lee, 826 So. 2d 1232, 2002 Miss. LEXIS 167 (Miss. 2002).

Proof of violation of statute is not necessary in order to prove negligence, and injured party established prima facie case of negligence by proving that driver violated statute by not stopping at crossing even though approaching train was plainly visible and in dangerous proximity to crossing, and by proving that driver was negligent in that he failed to keep proper lookout by looking back as he approached railroad crossing, rejecting contention of driver that because there was no evidence crossing was marked by signal or stop sign, injured party had failed to prove driver had violated statute and therefore had failed to prove negligence. Dale v. Bridges, 507 So. 2d 375, 1987 Miss. LEXIS 2525 (Miss. 1987).

Although this section [Code 1942, § 7776] requires motorists to stop prior to reaching a railroad crossing, it also specifies that a failure to do so does not necessarily defeat recovery, and in fact states that negligence on the part of the driver is a question for the jury. New Orleans & N. R. Co. v. Weary, 217 So. 2d 274, 1968 Miss. LEXIS 1260 (Miss. 1968).

Violation of this requirement held to establish negligence of driver of truck struck by train at crossing. Illinois C. R. Co. v. Nelson, 245 Miss. 395, 146 So. 2d 69, 1962 Miss. LEXIS 560, 1963 Miss. LEXIS 527, 1963 Miss. LEXIS 547 (Miss. 1962).

Since there was no substantial evidence of negligence on the part of the railroad, and the sole proximate cause of decedent's death was his failure to look and listen prior to driving his automobile onto the crossing in front of defendant's approaching train, judgment for plaintiff would be reversed and judgment entered in the supreme count for the railroad. Illinois C. R. Co. v. Smith, 243 Miss. 766, 140 So. 2d 856, 1962 Miss. LEXIS 406 (Miss. 1962).

Where a railroad train collided with a truck at a country crossing, situated in the middle of a curve so that the lights of the train did not show the crossing until it was too late to stop the train to avoid a collision in view of the railroad speed of about 55 or 60 miles per hour, the statutory signals had been given, and the plaintiff had failed to stop, look and listen before driving upon the crossing, no negligence could be charged against the railroad but plaintiff's negligence precluded his recovery for damage to the truck. Illinois C. R. Co. v. Roberson, 186 Miss. 507, 191 So. 494, 1939 Miss. LEXIS 265 (Miss. 1939).

Bus passenger held entitled, as matter of law, to recover against bus company for injuries sustained in crossing collision, where driver made no attempt to stop bus which was traveling about 25 miles per hour until within less than 10 feet of crossing. Teche Lines, Inc. v. Pope, 175 Miss. 393, 166 So. 539, 1936 Miss. LEXIS 34 (Miss. 1936).

Automobilist's failure to stop at crossing held no defense to action based on railroad's failure to blow whistle or ring bell. New Orleans & N. E. R. Co. v. Hegwood, 155 Miss. 104, 124 So. 66, 1929 Miss. LEXIS 262 (Miss. 1929).

Failure of driver of vehicle to stop held not to prevent recovery for injury proximately caused by railroad's negligence in failing to keep track reasonably safe. Gulf & S. I. R. Co. v. Saucier, 139 Miss. 497, 104 So. 180, 1925 Miss. LEXIS 162 (Miss. 1925).

3. Proximate cause.

Federal district court did not err in rejecting an injured contract worker's contention that a railroad was negligent per se for failing to install a flagman near a crossing 20-30 feet from where the worker was removing obstructions from the right-of-way; although the worker's truck was hit by a train while crossing the tracks, the evidence showed that the location of the work zone did not force the worker to "foul the tracks" while maneuvering his truck and that he had violated three separate laws when he crossed the tracks: not stopping after hearing the locomotive's whistle in violation of Miss. Code Ann. § 77-9-249(1), failing to stop at a crossbuck in violation of Miss. Code Ann. § 77-9-249(4), and failing to stop at a stop sign in violation of Miss. Code Ann. § 63-3-1009, any of which could have been the proximate cause of the accident. Baker v. Canadian National/Illinois Cent. R.R., 536 F.3d 357, 2008 U.S. App. LEXIS 15178 (5th Cir. Miss. 2008), cert. denied, 555 U.S. 1171, 129 S. Ct. 1317, 173 L. Ed. 2d 585, 2009 U.S. LEXIS 1320 (U.S. 2009).

The failure of a truckdriver to stop before crossing a railroad track as required by this section [Code 1942, § 7776] does not prevent him from recovering damages where the negligence of the railroad is a proximate cause of the injury. Mississippi E. R. Co. v. Clark, 223 So. 2d 542, 1969 Miss. LEXIS 1277 (Miss. 1969).

The mere fact that an automatic flashing signal and bell is in operation at a railroad crossing at the time a motorist attempts to cross the tracks is not of itself sufficient to require the trial court to hold as a matter of law that the failure of the motorist to heed such warning renders his act the sole proximate cause of the accident complained of. Illinois C. R. Co. v. Sanders, 229 Miss. 139, 90 So. 2d 366, 1956 Miss. LEXIS 595 (Miss. 1956), overruled, Sheffield v. Sheffield, 405 So. 2d 1314, 1981 Miss. LEXIS 2053 (Miss. 1981).

Failure of driver of vehicle to stop held not to prevent recovery for injury proximately caused by railroad's negligence in failing to keep track reasonably safe. Gulf & S. I. R. Co. v. Saucier, 139 Miss. 497, 104 So. 180, 1925 Miss. LEXIS 162 (Miss. 1925).

4. Evidence.

Although trial judge refused a peremptory instruction that the driver was negligent, there was ample evidence that by proceeding onto the railroad tracks before she assured herself that she would not be blocked on them, she violated the standard under Miss. Code Ann. § 77-9-249 and was therefore negligent per se. Bowman v. CSX Transp., Inc., 931 So. 2d 644, 2006 Miss. App. LEXIS 418 (Miss. Ct. App. 2006).

In wrongful death and negligent infliction of emotional distress claims, arising from a locomotive collision which killed a mother and her two sons, allowing testimony regarding sight distance and nonrecovery zones was not contrary to the law. Ill. Cent. R.R. Co. v. Hawkins, 830 So. 2d 1162, 2002 Miss. LEXIS 296 (Miss. 2002).

In action for death of motorist killed at railroad crossing on morning of fair day, evidence that there was a statutory stop sign at crossing, that motorist went upon tracks and stopped, that witnesses saw train and heard bell and whistle, and that engineer reduced speed, did not support verdict for plaintiffs on ground of railroad's negligence. Yazoo & M. V. R. Co. v. Lamensdorf, 180 Miss. 426, 177 So. 50, 178 So. 80, 1937 Miss. LEXIS 113 (Miss. 1937).

5. Questions for jury.

District court was not required to give the personal injury case of the driver of an automobile who was involved in an automobile-train collision to the jury under Miss. Code Ann. § 77-9-249 because the statute established a state procedural rule that was not binding on a federal court. King v. Ill. Cent. R.R., 337 F.3d 550, 2003 U.S. App. LEXIS 14567 (5th Cir. Miss. 2003).

In action for wrongful death of person killed when car he was driving was struck by train at grade crossing, alleged violation of statute by driver did not preclude recovery and question of proximate cause was to be left to jury. Beville v. Burlington N. Railroad, 960 F.2d 546, 1992 U.S. App. LEXIS 10486 (5th Cir. Miss. 1992).

Decedent's compliance with or breach of duties imposed on him by statute was question for jury, although there was no testimony at trial concerning decedent's compliance with or breach of duties imposed. Slay v. Illinois C. G. R. Co., 511 So. 2d 875, 1987 Miss. LEXIS 2495 (Miss. 1987).

Although this section [Code 1942, § 7776] requires motorists to stop prior to reaching a railroad crossing, it also specifies that a failure to do so does not necessarily defeat recovery, and in fact states that negligence on the part of the driver is a question for the jury. New Orleans & N. R. Co. v. Weary, 217 So. 2d 274, 1968 Miss. LEXIS 1260 (Miss. 1968).

Although motorist's failure to stop before attempting to cross railroad tracks was negligence contributing to the collision between his automobile and a railroad switch engine, trial court properly refused railroad's requested peremptory instruction where there were questions for the jury as to whether the proximate cause of the collision was failure of the railroad to ring the bell on its engine, or the negligence of the railroad's engineer in failing to stop the engine when the engineer saw that motorist's automobile was not going to stop. New Orleans & N. R. Co. v. Ready, 238 Miss. 199, 118 So. 2d 185, 1960 Miss. LEXIS 396 (Miss. 1960).

In a death action arising out of a collision between decedent's truck and defendant's freight train at a railroad crossing, conflicting testimony as to the speed of the train and the giving of the statutory signals, when considered in connection with the alleged obstruction of the decedent's view by a packing shed, depot building, and two box cars along the west side of the packing shed, all tending to show that the decedent could not have seen the train even by exercising reasonable care until he was in the act of crossing the track, presented an issue of fact for the jury as to whether or not the negligence of the defendant railroad company was a concurring or contributing cause of the accident. Illinois C. R. Co. v. Sanders, 229 Miss. 139, 90 So. 2d 366, 1956 Miss. LEXIS 595 (Miss. 1956), overruled, Sheffield v. Sheffield, 405 So. 2d 1314, 1981 Miss. LEXIS 2053 (Miss. 1981).

In an action against a railroad for wrongful death sustained in collision of train and automobile in which decedent was riding, the question whether negligent operation of a train at speed of fifty-five miles per hour at the crossing proximately caused or contributed to the collision and consequent death of the decedent was a question for the jury. Donald v. Gulf, M. & O. R. Co., 220 Miss. 714, 71 So. 2d 776, 1954 Miss. LEXIS 487 (Miss. 1954).

6. Jury instructions.

Trial court correctly gave the jury instruction which informed the jury that a driver had a statutory duty to stop, not only if a train was plainly visible and was in hazardous proximity to the crossing, but also if a train was approaching within approximately nine-hundred feet of the crossing when emitting a signal and that the train, due to its speed or close proximity to the crossing, was an immediate hazard; a driver was required to slow to a reasonable speed in approaching a grade crossing with railroad crossbuck signs, and to stop, if necessary, for safety purposes, and to then proceed only upon being able to do so safely. Richardson v. Norfolk & Southern Ry., 923 So. 2d 1002, 2006 Miss. LEXIS 48 (Miss. 2006).

In a case where the decedent was struck and killed by a train, the administratrix's jury instruction ignored the decedent's duty under Miss. Code Ann. § 77-9-249(4) when arriving at a crossing marked only by a crossbuck, which is to slow down, yield the right-of-way, and stop if required for safety. Thus, the trial court did not abuse its discretion in refusing to instruct the jury as requested by the administratrix and the jury was adequately instructed as to a driver's duty, in this case the decedent, when approaching a railroad crossing. Clark v. Ill. Cent. R.R., 872 So. 2d 773, 2004 Miss. App. LEXIS 423 (Miss. Ct. App. 2004).

7. Directed verdict.

In bus passenger's action for injuries received in crossing collision, directing verdict for railroad company held not prejudicial to bus company, since joint tortfeasors are equally liable, and there can be no contribution between them. Teche Lines, Inc. v. Pope, 175 Miss. 393, 166 So. 539, 1936 Miss. LEXIS 34 (Miss. 1936).

8. Damages.

Bus driver, who made no attempt to stop bus until within less than 20 feet of railroad crossing, held "grossly negligent," entitling passenger injured in collision with train to punitive damages. Teche Lines, Inc. v. Pope, 175 Miss. 393, 166 So. 539, 1936 Miss. LEXIS 34 (Miss. 1936).

$15,000 for injuries to bus passenger in crossing collision held not excessive, where verdict included punitive damages. Teche Lines, Inc. v. Pope, 175 Miss. 393, 166 So. 539, 1936 Miss. LEXIS 34 (Miss. 1936).

RESEARCH REFERENCES

ALR.

Liability for motor vehicle accident where vision of driver is obscured by smoke, dust, atmospheric condition, or unclean windshield. 42 A.L.R.2d 13.

Failure of signaling device at crossing to operate, as affecting railroad company's liability. 90 A.L.R.2d 350.

Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam. 32 A.L.R.4th 933.

Am. Jur.

65 Am. Jur. 2d, Railroads §§ 299 et seq.

21 Am. Jur. Pl & Pr Forms (Rev), Railroads, Forms 169 et seq.

23 Am. Jur. Trials 1, Railroad Crossing Accident Litigation.

10 Am. Jur. Proof of Facts 1, Railroads.

18 Am. Jur. Proof of Facts 2d 611, Extrahazardous Nature of Railroad Crossing – Obstruction of View.

CJS.

74 C.J.S., Railroads §§ 959 et seq.

§ 77-9-250. Operation Lifesaver Program; purpose; Operation Lifesaver Fund created; sources of funds.

(1) There is created within the Department of Transportation the Operation Lifesaver Program. The purpose of the program is to increase safety of and prevent loss of life and property at railroad crossings by increasing compliance, on the part of the railroads and the public, with the provisions of Section 77-9-249.

(2) There is created in the State Treasury a special fund to be known as

the Operation Lifesaver Fund. The purpose of the fund shall be to provide funding for the Operation Lifesaver Program. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Department of Transportation. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding Operation Lifesaver;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by or allowable under law.

HISTORY:

Laws, 2010, ch. 495, § 3, eff from and after July 1, 2010.

§ 77-9-251. Highway crossings and bridges.

Where a railroad is constructed so as to cross a highway, and it be necessary to raise or lower the highway, it shall be the duty of the railroad company to make proper and easy grades in the highway, so that the railroad may be conveniently crossed, and to keep such crossings in good order. It shall be the duty of the railroad company to erect and keep in order all bridges on any highway, at such points as bridges may be necessary to cross the railroad. Any company which shall fail to comply with these provisions within sixty (60) days from the filing of written notice by the board of supervisors of the county in which said crossing is located, served upon the agent of said railroad company located in said county by the sheriff, as other processes are served, shall forfeit the sum of the cost of construction of said bridge or crossing, to be recovered by action in the name of the county in which the bridge or crossing is situated, upon an itemized bill of cost of said work.

HISTORY:

Codes, 1857, ch. 35, art. 42; 1871, § 2428; 1880, § 1053; 1892, § 3555; 1906, § 4053; Hemingway's 1917, § 6677; 1930, § 6127; 1942, § 7779; Laws, 1926, ch. 235.

Cross References —

Municipal regulation of railroad crossings, see § 21-37-9.

Crossing under or through railroad when ditches or drains are constructed in drainage district, see § 51-31-89.

Duties of the highway commission with respect to grade crossings, see § 65-1-8.

Supervision by county supervisor of public highways of his district, see § 65-7-115.

Abandonment of a county road affecting railroad bridges or crossings, see § 65-7-121.

Restrictions on collecting tolls on bridge where corporation has been convicted, on indictment for nuisance, for not repairing or keeping in repair bridge, see § 97-15-51.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Application to highways constructed after railroad.
3. Highway crossings.
4. Bridges, viaducts and underpasses.
5. Notice to railroad.
6. Liability for injury.
7. Proximate cause.
8. Contributory negligence.
9. Evidence.
10. Instructions.

1. In general.

Statute charging highway commission with duty of maintaining state highways, held not in conflict with this section [Code 1942, § 7779], imposing upon railroads duty of maintaining bridges and approaches over railways. Alabama & V. R. Co. v. Graham, 171 Miss. 695, 157 So. 241, 1934 Miss. LEXIS 216 (Miss. 1934).

This section [Code 1942, § 7779] has no application to plantation road not public. New Orleans G. N. R. Co. v. McGowan, 111 Miss. 181, 71 So. 317, 1916 Miss. LEXIS 266 (Miss. 1916).

The word "highway" in this section [Code 1942, § 7779] includes streets in a municipality. Hamlin v. Southern R. Co., 76 Miss. 410, 25 So. 295, 1898 Miss. LEXIS 137 (Miss. 1898).

2. Application to highways constructed after railroad.

Under this section [Code 1942, § 7779] railroad is not absolved from liability to one injured because of defective crossing because track was constructed before highway. Mississippi C. R. Co. v. Alexander, 169 Miss. 620, 152 So. 653, 1934 Miss. LEXIS 21 (Miss. 1934).

The fact that a railroad company had constructed its track and put the same in operation before a highway was laid out does not relieve it of its duty under this section [Code 1942, § 7770] to erect a bridge over the track or grade the approaches for the highway. Illinois C. R. Co. v. Swalm, 83 Miss. 631, 36 So. 147, 1903 Miss. LEXIS 83 (Miss. 1904).

The duty to erect and maintain a bridge applies to a highway laid out after the railroad was constructed; The section [Code 1942, § 7779] is within the police power and as so construed, does not deprive owners of a previously constructed road of property, without due process of law nor impair charter rights. Illinois C. R. Co. v. Copiah County, 81 Miss. 685, 33 So. 502, 1902 Miss. LEXIS 196 (Miss. 1902).

3. Highway crossings.

A railroad is required to keep its crossings of public roads "in good order." New Orleans & N. R. Co. v. Phillips, 252 Miss. 438, 172 So. 2d 414, 1965 Miss. LEXIS 1118 (Miss. 1965).

A railroad company has an affirmative duty to maintain highway crossings so as to fulfil its obligation of affording proper security for life and property. Illinois C. R. Co. v. Farris, 259 F.2d 445, 1958 U.S. App. LEXIS 4753 (5th Cir. Miss. 1958).

Statute requiring railroad constructing tracks across highways to construct and maintain convenient crossings, is not restricted to cases where it is necessary to raise or lower highway. Mississippi C. R. Co. v. Alexander, 169 Miss. 620, 152 So. 653, 1934 Miss. LEXIS 21 (Miss. 1934).

A municipality could not relieve railroad of duty imposed by statute to maintain crossings. Mississippi C. R. Co. v. Alexander, 169 Miss. 620, 152 So. 653, 1934 Miss. LEXIS 21 (Miss. 1934).

This section [Code 1942, § 7779] imposes public duty on railroads to construct and maintain convenient crossings violation of which entitles person injured thereby, while traveling on highway, to recover. Mississippi C. R. Co. v. Alexander, 169 Miss. 620, 152 So. 653, 1934 Miss. LEXIS 21 (Miss. 1934).

Railroad has duty only of making necessary and easy grades over roadbed to permit safe and convenient passage by persons using reasonable care. Gulf & S. I. R. Co. v. Simmons, 150 Miss. 506, 117 So. 345, 1928 Miss. LEXIS 182 (Miss. 1928).

The grade required in the construction of a railroad crossing depends upon the extent to which it has been found necessary to raise or lower the natural surface of the ground. Gulf & C. R. Co. v. Sneed, 84 Miss. 252, 36 So. 261, 1904 Miss. LEXIS 36 (Miss. 1904).

4. Bridges, viaducts and underpasses.

A railroad company constructing an underpass is under a continuing duty to maintain trestles so as to afford sufficient clearance or headway for ordinary vehicular traffic. Illinois C. R. Co. v. Farris, 259 F.2d 445, 1958 U.S. App. LEXIS 4753 (5th Cir. Miss. 1958).

Under statute requiring railway company to erect and keep in order bridges over highways at such points as bridges may be necessary to cross railway, railway's duty was not limited to erection and maintenance of bridges only at points where it was impossible to otherwise cross tracks. Alabama & V. R. Co. v. Graham, 171 Miss. 695, 157 So. 241, 1934 Miss. LEXIS 216 (Miss. 1934).

Where county board ordered railway to erect bridge over highway, by common law and by statute, continuing duty rested on railway to maintain bridge and approaches in good order and in condition reasonably safe for ordinary uses of public. Alabama & V. R. Co. v. Graham, 171 Miss. 695, 157 So. 241, 1934 Miss. LEXIS 216 (Miss. 1934).

That county assumed part of cost of railway bridge over highway and burden of erecting and maintaining bridge and approaches thereto did not relieve railway of statutory duty of maintaining bridge and approaches in good order and in condition reasonably safe for ordinary uses of public. Alabama & V. R. Co. v. Graham, 171 Miss. 695, 157 So. 241, 1934 Miss. LEXIS 216 (Miss. 1934).

Railroad's duty to pedestrian struck by automobile when crossing bridge over tracks was to use ordinary care to keep bridge in reasonably safe condition for persons using ordinary care. Illinois C. R. Co. v. Bloodworth, 166 Miss. 602, 145 So. 333, 1933 Miss. LEXIS 320 (Miss. 1933).

Railroad had duty to keep bridge over tracks in condition rendering it reasonably safe for traffic and for such uses as might be reasonably necessary for persons using reasonable care; and railroad had right to presume that its bridge over tracks would be used in lawful manner. Illinois C. R. Co. v. Bloodworth, 166 Miss. 602, 145 So. 333, 1933 Miss. LEXIS 320 (Miss. 1933).

Where railroad maintained bridge over tracks, there was no statute requiring separate bridge for pedestrians and none requiring guard rails between walkway and driveway. Illinois C. R. Co. v. Bloodworth, 166 Miss. 602, 145 So. 333, 1933 Miss. LEXIS 320 (Miss. 1933).

Municipality could not compel railroad to construct viaduct to carry street, not legally laid out, over its right of way. Illinois C. R. Co. v. State, 94 Miss. 759, 48 So. 561, 1909 Miss. LEXIS 355 (Miss. 1909).

An omission to repair a bridge on a highway is covered by this section [Code 1942, § 7779]; Code 1880, § 2871, applies only where obstruction is caused by a positive use of physical means. Vicksburg & M. R. Co. v. State, 64 Miss. 5, 8 So. 128, 1886 Miss. LEXIS 2 (Miss. 1886).

5. Notice to railroad.

Notice to railroad of defective railroad crossing required by statute providing that railroad constructing tracks across highways must construct and maintain convenient crossings, relates to notice by county board of supervisors and not to private individuals. Mississippi C. R. Co. v. Alexander, 169 Miss. 620, 152 So. 653, 1934 Miss. LEXIS 21 (Miss. 1934).

6. Liability for injury.

Finding against the driver in her action against the city for injuries resulting from a collision with a train at a railroad crossing was appropriate because Mississippi law formed a consistent pattern with other authority that it was the railroad that maintained the crossing at issue and not the city. Bowman v. CSX Transp., Inc., 931 So. 2d 644, 2006 Miss. App. LEXIS 418 (Miss. Ct. App. 2006).

In an action arising from a collision between a train and a car, which was allegedly caused, in part, by a lack of active protection at a crossing and vegetation which obstructed the view of the operator of the car, the court rejected the railroad's contention that §§ 63-3-303 and 63-3-305 removed any and all responsibility from its shoulders and transfered the duty to the Mississippi Department of Transportation, as §§ 77-9-245, 77-9-247, 77-9-248, 77-9-251, and 77-9-253 all clearly refer to duties of the railroad in the interest of public safety. Kansas City S. Ry. Co. v. Johnson, 798 So. 2d 374, 2001 Miss. LEXIS 26 (Miss.), cert. denied, 534 U.S. 816, 122 S. Ct. 43, 151 L. Ed. 2d 15, 2001 U.S. LEXIS 5524 (U.S. 2001).

A railroad company which constructed an underpass for highway traffic, and which failed to post warning signs with respect to its height, was not relieved of responsibility for an injury to the driver of the truck which, being higher than the clearance of the underpass, collided therewith, by the fact that a county was under the duty of maintaining the road and posting signs and that the road might have been raised by resurfacing job, since both parties owed a duty to the traveling public, and the protection afforded the county by law did not affected the liability of the railroad company. Illinois C. R. Co. v. Farris, 259 F.2d 445, 1958 U.S. App. LEXIS 4753 (5th Cir. Miss. 1958).

If railway discharges its duty to keep bridge across railway in such condition as to render it reasonably safe for persons using ordinary care, railway company is discharged from liability. Alabama & V. R. Co. v. Graham, 171 Miss. 695, 157 So. 241, 1934 Miss. LEXIS 216 (Miss. 1934).

This section [Code 1942, § 7779] imposes a public duty on railroads to construct and maintain convenient crossings, a violation of which entitles a person injured thereby, while traveling on the highway, to recover. Mississippi C. R. Co. v. Alexander, 169 Miss. 620, 152 So. 653, 1934 Miss. LEXIS 21 (Miss. 1934).

Railroad's liability for personal injuries caused by defect in crossing held not affected by fact that dirt or gravel was washed from crossing in absence of showing that washing was caused by unprecedented flood, and that railroad had exercised due care. Mississippi C. R. Co. v. Alexander, 169 Miss. 620, 152 So. 653, 1934 Miss. LEXIS 21 (Miss. 1934).

The statute makes a railroad company liable for failing to keep a railroad crossing in good order only where an accident happens at the crossing. Gulf & C. R. Co. v. Sneed, 84 Miss. 252, 36 So. 261, 1904 Miss. LEXIS 36 (Miss. 1904).

A railroad company is not liable for an injury received from a defect in the highway beyond a crossing, although it be on its right of way. Gulf & C. R. Co. v. Sneed, 84 Miss. 252, 36 So. 261, 1904 Miss. LEXIS 36 (Miss. 1904).

7. Proximate cause.

Negligence of railroad in failing to maintain crossing and negligence of motorist in driving at 30 to 35 miles per hour held proximate cause of injuries to automobile passenger. Mississippi C. R. Co. v. Alexander, 169 Miss. 620, 152 So. 653, 1934 Miss. LEXIS 21 (Miss. 1934).

Injuries proximately caused by unsafe crossing held actionable. Gulf & S. I. R. Co. v. Saucier, 139 Miss. 497, 104 So. 180, 1925 Miss. LEXIS 162 (Miss. 1925).

8. Contributory negligence.

Where railway failed to keep bridge across railway in such condition as to render it reasonably safe to persons using bridge, and failure contributed to injury of person using bridge, recovery would not be barred by reason of negligence of such person because such negligence would only operate to diminish damages. Alabama & V. R. Co. v. Graham, 171 Miss. 695, 157 So. 241, 1934 Miss. LEXIS 216 (Miss. 1934).

9. Evidence.

In suit by automobile passenger for injuries received when crossing railroad tracks, evidence warranted finding that portion of crossing between rails was not properly maintained by railroad as required by statute. Mississippi C. R. Co. v. Alexander, 169 Miss. 620, 152 So. 653, 1934 Miss. LEXIS 21 (Miss. 1934).

10. Instructions.

Instruction predicating railroad's liability solely on failure to maintain proper grade within right of way held erroneous under evidence. Gulf & S. I. R. Co. v. Simmons, 150 Miss. 506, 117 So. 345, 1928 Miss. LEXIS 182 (Miss. 1928).

OPINIONS OF THE ATTORNEY GENERAL

Municipality has authority and affirmative duty to repair and maintain city streets and to this end, municipality may contract with railroad company to improve railroad crossings at intersections city streets and may use municipal funds, employees and equipment for such purposes; however, municipality must obtain approval of Department of Transportation of contracts concerning railroad crossings and of improvements made by municipality at railroad crossings; furthermore, municipality may not contract to assume responsibility or costs of improvements which are by law responsibility of railroad. 1993 Miss. Op. Att'y Gen. 727.

RESEARCH REFERENCES

ALR.

Liability of railroad for injury or damage resulting from motor vehicle striking bridge or underpass because of insufficient vertical clearance. 67 A.L.R.2d 1364.

Am. Jur.

65 Am. Jur. 2d, Railroads §§ 138 et seq.

21 Am. Jur. Pl & Pr Forms (Rev), Railroads, Removal of unauthorized RR crossing by municipal corporation, Form 19.

18 Am. Jur. Proof of Facts 2d 611, Extrahazardous Nature of Railroad Crossing – Obstruction of View.

CJS.

74 C.J.S., Railroads §§ 291 et seq.

§ 77-9-252. Railroad grade crossings; private entity to pay cost of installation under certain circumstances.

(1) Any developer, corporation, individual or other private entity requesting or applying for a new public railroad grade crossing shall be responsible for all costs for installing appropriate warning devices, for installing appropriate crossing surfaces and approaches, for establishing appropriate crossing profiles and for obtaining easements to maintain sight distance as deemed necessary for such crossing by a diagnostic survey team comprised of the Mississippi Department of Transportation Rails Engineer, a representative

from the Federal Highway Administration, a representative of the affected railroad company and a representative of the affected local governmental jurisdiction.

(2) When an existing private railroad grade crossing maintained for or by a private party is requested to become a publicly maintained railroad grade crossing, or when an existing private railroad grade crossing maintained for or by a private party is permitted by that party to be used as a public railroad grade crossing, the private party shall be responsible for all costs for installing warning devices, for replacing or modifying crossing surfaces and approaches as appropriate, for establishing appropriate crossing profiles and for obtaining easements to maintain sight distances as deemed necessary by the diagnostic survey team described in subsection (1) of this section for safety of the traveling public at such crossing before opening such crossing to the public. As used in this section, the term "private railroad grade crossing" means any privately maintained road or street not under the jurisdiction of a public entity that crosses a railroad, and which is permitted by a private railroad company or by other agreement, deed or law to cross its railroad tracks and right-of-way.

(3) Any developer, corporation, individual or other private entity requesting or applying for a new public railroad grade crossing or for conversion of an existing private railroad grade crossing to a public railroad grade crossing, at the time of the request or application, shall notify the local roadway authority and the Mississippi Department of Transportation of such request or application.

HISTORY:

Laws, 1999, ch. 357, § 1, eff from and after July 1, 1999.

OPINIONS OF THE ATTORNEY GENERAL

The statute did not apply to a railroad crossing on a city street that was to be reconstructed after having been closed for many years. 2001 Miss. Op. Att'y Gen. 131.

§ 77-9-253. Stock-gaps and cattle-guards; crossing for plantation roads; penalty.

(1) It is the duty of every railroad company to construct and maintain all necessary or proper stock gaps and cattle guards where its track passes through enclosed land, and to make and maintain convenient and suitable crossings over its track for necessary plantation roads. However, the duty to make and maintain convenient and suitable crossings for necessary plantation roads shall not apply to property under common ownership that is contiguous to a public road which provides access to a reasonably convenient public railroad crossing. For the purposes of this section, a public railroad crossing is reasonably convenient if it is one (1) mile or less from the plantation road measured along the railroad track.

(2) For any failure to comply with subsection (1) of this section, the railroad company shall be liable to pay Two Hundred Fifty Dollars ($250.00), to be recovered by the person interested.

(3) A person owning or having an interest as cropper or tenant in land in an enclosure as described in subsection (1) of this section shall have a right of action under this section whether the land of such person is entered or traversed by said track or not.

(4) This section shall apply to all enclosed land, whether said land is or may be situated in a county or district where the stock law is or may be in force or not. The penalty provided for in subsection (2) of this section shall not be cumulative, and only one (1) recovery shall be had for each failure.

(5) The provisions of this section may be enforced by a court of competent jurisdiction.

(6) The provisions of this section shall not relieve a railroad company from the duty to continue to maintain convenient and suitable crossings over its track for necessary plantation roads and all necessary or proper stock gaps and cattle guards, if such crossings, stock gaps and cattle guards existed and were in use before July 1, 2002.

HISTORY:

Codes, 1892, § 3561; 1906, § 4058; Hemingway's 1917, § 6686; 1930, § 6129; 1942, § 7781; Laws, 1992, ch. 496, § 66; Laws, 2002, ch. 629, § 1, eff from and after July 1, 2002.

Cross References —

Mississippi Department of Transportation, see § 65-1-2.

Larceny of animal killed or wounded by train, see § 97-25-31.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction and application, generally.
3. Enclosed land.
4. Persons entitled to right of action.
5. Stock-gaps and cattle-guards.
6. Plantation road crossings.
7. Evidence.
8. Instructions.
9. Recovery, generally.
10. —Damages.
11. —Penalty.

1. In general.

In an action arising from a collision between a train and a car, which was allegedly caused, in part, by a lack of active protection at a crossing and vegetation which obstructed the view of the operator of the car, the court rejected the railroad's contention that §§ 63-3-303 and 63-3-305 removed any and all responsibility from its shoulders and transfered the duty to the Mississippi Department of Transportation, as §§ 77-9-245, 77-9-247, 77-9-248, 77-9-251, and 77-9-253 all clearly refer to duties of the railroad in the interest of public safety. Kansas City S. Ry. Co. v. Johnson, 798 So. 2d 374, 2001 Miss. LEXIS 26 (Miss.), cert. denied, 534 U.S. 816, 122 S. Ct. 43, 151 L. Ed. 2d 15, 2001 U.S. LEXIS 5524 (U.S. 2001).

This section [Code 1942, § 7781] is a legitimate exercise of the police power of the state and is not violative of the fourteenth amendment to the federal Constitution as depriving a railroad company of property without due process of law. Yazoo & M. V. R. Co. v. Harrington, 85 Miss. 366, 37 So. 1016, 1904 Miss. LEXIS 173 (Miss. 1905).

2. Construction and application, generally.

Logging road held not a railroad within this statute. Eastman, Gardner & Co. v. Sullivan, 131 Miss. 763, 95 So. 673, 1923 Miss. LEXIS 214 (Miss. 1923); New Deemer Mfg. Co. v. Kilpatrick, 129 Miss. 268, 92 So. 71, 1922 Miss. LEXIS 41 (Miss. 1922).

This section [Code 1942, § 7781] must be strictly construed. Southern R. Co. v. Murrell, 78 Miss. 446, 28 So. 824, 1900 Miss. LEXIS 93 (Miss. 1900); Kansas C., M. & B. R. Co. v. Jones, 73 Miss. 397, 18 So. 684, 1895 Miss. LEXIS 96 (Miss. 1895).

The purpose of this section [Code 1942, § 7781] is to secure the safety of travel as well as to protect the owners of cattle killed or injured. Canton, A. & N. R. Co. v. French, 75 Miss. 939, 23 So. 357, 1898 Miss. LEXIS 6 (Miss. 1898); Kansas C., M. & B. R. Co. v. Spencer, 72 Miss. 491, 17 So. 168, 1894 Miss. LEXIS 130 (Miss. 1894).

The statute is integrated into a charter of a company organized under general law to operate a railroad purchased at foreclosure sale. Alabama & Vicksburg Ry. v. Odeneal, 73 Miss. 34, 19 So. 202, 1895 Miss. LEXIS 146 (Miss. 1895).

3. Enclosed land.

This section [Code 1942, § 7781], as embodied in Code 1892, § 3561, is not applicable unless the land is substantially enclosed. Yazoo & M. V. R. Co. v. Sallis, 89 Miss. 636, 42 So. 202, 1906 Miss. LEXIS 19 (Miss. 1906).

The fact that land, not itself entered by a railroad line, being in a stock law district, is inclosed by a public fence around the district does not make it "inclosed land" within the meaning of the statute. Kansas C., M. & B. R. Co. v. Jones, 73 Miss. 397, 18 So. 684, 1895 Miss. LEXIS 96 (Miss. 1895).

4. Persons entitled to right of action.

Owner of land adjacent to right of way held not entitled to statutory damages for railroad's failure to maintain stock-gaps and cattle-guards. Gulf & S. I. R. Co. v. Allen, 145 Miss. 415, 110 So. 844, 1927 Miss. LEXIS 124 (Miss. 1927).

This section [Code 1942, § 7781] does not apply to one whose land is not entered by the railroad right of way although he is denied ingress and egress to market by construction of the tracks. Jackson v. St. Louis & S. F. R. Co., 120 Miss. 149, 81 So. 796, 1919 Miss. LEXIS 72 (Miss. 1919).

One traveling over plantation road not connected with plantation to which it was appurtenant could not recover against railroad for injuries to his mule when it fell through a defective bridge taking road over the tracks. New Orleans G. N. R. Co. v. McGowan, 111 Miss. 181, 71 So. 317, 1916 Miss. LEXIS 266 (Miss. 1916).

Landowner releasing, by deed, railroad company from obligation of this section [Code 1942, § 7781], bound his grantee thereto. Gulf & S. I. R. Co. v. Chapman, 102 Miss. 778, 59 So. 889, 1912 Miss. LEXIS 122 (Miss. 1912).

A lessee may sue a railroad company for the penalty and damages caused by failure to construct stock-gaps and cattle-guards though his land is not separately inclosed. Vicksburg, S. & P. R. Co. v. Lawrence, 78 Miss. 86, 28 So. 826, 1900 Miss. LEXIS 95 (Miss. 1900).

This section [Code 1942, § 7781] does not give an action to one whose lands are not entered by a railroad track although they be in the same inclosure with those of another which are entered. Southern R. Co. v. Murrell, 78 Miss. 446, 28 So. 824, 1900 Miss. LEXIS 93 (Miss. 1900).

The owner of land in a stock law district where the common-law rule as to stock running at large prevails, cannot hold a railroad for the penalty for failure to maintain stock-gaps or cattle-guards. Canton, A. & N. R. Co. v. French, 75 Miss. 939, 23 So. 357, 1898 Miss. LEXIS 6 (Miss. 1898).

The right of a lessee to recover the penalty for the violation of its duty by a railroad company during his tenancy is not impaired by the termination of his interest in the premises pending suit. Alabama & V. R. Co. v. Ligon, 74 Miss. 176, 20 So. 988, 1896 Miss. LEXIS 132 (Miss. 1896).

One having no interest in any inclosed land entered by a line of railroad cannot recover under the statute for failure to construct and maintain stock-gaps and cattle-guards. Kansas C., M. & B. R. Co. v. Jones, 73 Miss. 397, 18 So. 684, 1895 Miss. LEXIS 96 (Miss. 1895).

The statute does not characterize the title the party complaining must have. Kansas C., M. & B. R. Co. v. Spencer, 72 Miss. 491, 17 So. 168, 1894 Miss. LEXIS 130 (Miss. 1894).

5. Stock-gaps and cattle-guards.

Where a railroad company constructed a sufficient stock-gap and cattle-guard both where its track entered and where it passed out of inclosed lands used as one tract and belonging to one person, it complied with the requirements of this section [Code 1942, § 7781]. Gulf & S. I. R. Co. v. Ellis, 85 Miss. 586, 38 So. 210, 1904 Miss. LEXIS 193 (Miss. 1904).

It cannot be required to construct other stock-gaps or cattle-guards at a place within the inclosure where for the convenience of the owner it had constructed a crossing. Gulf & S. I. R. Co. v. Ellis, 85 Miss. 586, 38 So. 210, 1904 Miss. LEXIS 193 (Miss. 1904).

It cannot be judicially declared that the maintenance of a cattle-guard of a specified pattern is a compliance with this section [Code 1942, § 7781]. Yazoo & M. V. R. Co. v. Harrington, 85 Miss. 366, 37 So. 1016, 1904 Miss. LEXIS 173 (Miss. 1905).

A specified pattern of a surface cattle-guard cannot be judicially declared to be a compliance with the section because it is less dangerous to the traveling public than the pit-guard, though it may be less effective in turning cattle. Yazoo & M. V. R. Co. v. Harrington, 85 Miss. 366, 37 So. 1016, 1904 Miss. LEXIS 173 (Miss. 1905).

A railway company must construct its cattle-guards so that they will extend across the entire width of the right of way occupied by it at each point where it enters and leaves each side of each necessary inclosure. Grace v. Gulf & C. R. Co., 25 So. 875 (Miss. 1899).

The cattle-guard should extend the whole width of the right of way. Kansas C., M. & B. R.

Co. v. Spencer, 72 Miss. 491, 17 So. 168, 1894 Miss. LEXIS 130 (Miss. 1894).

6. Plantation road crossings.

Railroad is not required to extend cattle-guard across vacant lands owned by it adjacent to right of way. Gulf & S. I. R. Co. v. Allen, 145 Miss. 415, 110 So. 844, 1927 Miss. LEXIS 124 (Miss. 1927).

Railroad commission has no authority to require establishment of crossings for plantation roads. Mississippi R. Com. v. Illinois C. R. Co., 113 Miss. 92, 73 So. 878, 1916 Miss. LEXIS 16 (Miss. 1917).

Word "crossing" means crossing over whole right of way. Illinois C. R. Co. v. McGowan, 92 Miss. 603, 46 So. 55, 1908 Miss. LEXIS 199 (Miss. 1908).

Term "necessary plantation roads" defined as roads necessary to plantation to which they are annexed. Illinois C. R. Co. v. McGowan, 92 Miss. 603, 46 So. 55, 1908 Miss. LEXIS 199 (Miss. 1908).

A railroad company which leaves a train of cars standing upon a plantation road crossing for six consecutive days so as to deprive the owner of its use continuously during that time, is liable under this section [Code 1942, § 7781]. Illinois C. R. Co. v. Denham, 82 Miss. 77, 33 So. 839, 1903 Miss. LEXIS 109 (Miss. 1903).

Where several tenants rented separate tracts of land in an inclosed field and a railroad company whose tracks ran through the field put in the proper stock-gaps and cattle-guards at the point of entry and departure, the company was not required to also put in guards at each place where its track entered the uninclosed parcel of each particular tenant. Gibbons v. Yazoo & M. V. R. Co., 33 So. 5 (Miss. 1902).

The statute is highly penal and if a railroad which has fenced its right of way offers to erect gates in the fences on both sides of the track, the owner of the servient estate cannot sue for the penalty because the railroad will not tear down its fences and give him an open land and cattle-guards. Yazoo & M. V. R. Co. v. Anderson, 76 Miss. 582, 25 So. 295, 1898 Miss. LEXIS 136 (Miss. 1898).

A road connecting a dwelling house and the pasture land of a farm is a necessary plantation road within the statute. Alabama & V. R. Co. v. Ligon, 74 Miss. 176, 20 So. 988, 1896 Miss. LEXIS 132 (Miss. 1896).

The duty to make and maintain suitable crossings over its tracks for necessary plantation roads exists whether the land be inclosed or not. Hardy v. Alabama & Vicksburg Ry., 73 Miss. 719, 19 So. 661, 1896 Miss. LEXIS 196 (Miss. 1896).

Where a railroad does not run through any part of a plantation but its right of way adjoins it on one side, a road running across its track into the plantation on that side is not covered by the statute. Seelbinder v. Illinois Cent. R.R., 73 Miss. 84, 19 So. 300, 1895 Miss. LEXIS 165 (Miss. 1895).

The word "necessary" does not mean an indispensable road but such as is reasonably convenient. Alabama & Vicksburg Ry. v. Odeneal, 73 Miss. 34, 19 So. 202, 1895 Miss. LEXIS 146 (Miss. 1895).

The word "plantation" includes a stock farm. Alabama & Vicksburg Ry. v. Odeneal, 73 Miss. 34, 19 So. 202, 1895 Miss. LEXIS 146 (Miss. 1895).

7. Evidence.

Evidence that road leading to crossing is in suitable condition held not necessary for recovery of penalty for failure to maintain crossing in suitable condition. Sardis & D. R. Co. v. Gordan, 100 Miss. 786, 57 So. 219, 1911 Miss. LEXIS 73 (Miss. 1911).

8. Instructions.

An instruction to the jury in an action for damages to a tractor struck by a train at a plantation crossing that the only issue was as to whether the engineer in the exercise of reasonable care did all he could to stop the train, was erroneous, in that it eliminated the question as to the duty of the engineer to blow the whistle or ring the bell, and the question as regards the issue raised by the plaintiff's proof as to whether the defendant was maintaining a suitable crossing for a necessary plantation road at the place in question, notwithstanding instructions were given on behalf of the plaintiff conflicting with the one first mentioned. Johnson v. Columbus & G. R. Co., 192 Miss. 627, 7 So. 2d 517, 1942 Miss. LEXIS 54 (Miss. 1942).

9. Recovery, generally.

Penalty may be recovered without plaintiff showing any damage to himself, though actual damages may also be recovered. Sardis & D. R. Co. v. Gordan, 100 Miss. 786, 57 So. 219, 1911 Miss. LEXIS 73 (Miss. 1911).

The penalty and actual damages may be recovered in the same action. Kansas C., M. & B. R. Co. v. Spencer, 72 Miss. 491, 17 So. 168, 1894 Miss. LEXIS 130 (Miss. 1894).

10. —Damages.

The company is liable for damages to crops by cattle getting through improper cattle-guards. Kansas C., M. & B. R. Co. v. Spencer, 72 Miss. 491, 17 So. 168, 1894 Miss. LEXIS 130 (Miss. 1894).

11. —Penalty.

Suit held pending from time railroad company appealed from judgment imposing a penalty on it for failure to maintain proper stock-gap and cattle-guard until it paid judgment a few months later, and it could within that time repair the fence and bar a second suit for another penalty. Yazoo & M. V. R. Co. v. Neal, 93 Miss. 680, 47 So. 673, 1908 Miss. LEXIS 159 (Miss. 1908).

A receiver of a railroad is liable to the penalty for violation of the statute. Memphis & C. R. Co. v. Glover, 78 Miss. 467, 29 So. 89, 1900 Miss. LEXIS 130 (Miss. 1900).

A railroad is entitled to a reasonable time within which to construct a crossing after being adjudged under duty to do so, before it can be held to be liable in a second suit for the penalty. Alabama & V. R. Co. v. Odeneal, 74 Miss. 827, 21 So. 52, 1897 Miss. LEXIS 40 (Miss. 1897).

Where there is a failure to construct and maintain "proper cattle-guards," and also "suitable and convenient crossings," whether one or more of each, provided they are all on one track of enclosed line, only one penalty of two hundred and fifty dollars can be recovered. Kansas C., M. & B. R. Co. v. Spencer, 72 Miss. 491, 17 So. 168, 1894 Miss. LEXIS 130 (Miss. 1894).

If after one suit the company fails to construct or maintain proper cattle-guards, the penalty again attaches and so on continuously. Kansas C., M. & B. R. Co. v. Spencer, 72 Miss. 491, 17 So. 168, 1894 Miss. LEXIS 130 (Miss. 1894).

RESEARCH REFERENCES

Am. Jur.

21 Am. Jur. Pl & Pr Forms (Rev), Railroads, Proposed right-of-way, Form 73.

§ 77-9-254. Removal by railroad companies of vegetation at railroad right-of-way grade crossings; specifications; inspections by Department of Transportation; fines; damages.

(1) At all public highway railroad grade crossings that do not have automatic flashing lights and/or gates where vegetation would materially obstruct the view of a vehicle operator exercising reasonable care of a train approaching a grade crossing from either direction, every railroad, as is reasonably practical, shall remove from its right-of-way which it owns or operates, such vegetation as weeds, brush, climbing vines, shrubbery and trees, for a distance of not less than three hundred (300) feet in each direction from the centerline of the public road or highway, unless the authorized train speed is ten (10) miles per hour or less, in which case the distance from the centerline of the public road or highway shall be not less than one hundred (100) feet. At the outer edges of the public road or highway, the vegetation shall be removed to a width of twenty-five (25) feet on each side of the centerline of the railroad or to the full width of the railroad's operating right-of-way whichever is shorter. The area cleared of vegetation may be tapered inward from its full width at the involved roadway to the outer limits of the area being cleared so as to create a triangle, or it may be cleared at a constant width so as to form a rectangle.

(2) The violation of subsection (1) of this section shall not of itself be grounds for recovery, and the comparative negligence statute and the apportionment statute of this state shall apply in these cases as in other cases of negligence.

(3) This section does not change or modify the duties of the operator of a vehicle as set forth in Section 77-9-249, 63-3-1007, 63-3-1009, 63-3-1011 or 63-3-1013, or the application of such sections.

(4) The Department of Transportation may periodically inspect and evaluate all public highway railroad grade crossings to determine whether such grade crossings are maintained in compliance with the provisions of this section. If the department determines that a particular grade crossing is not in compliance, the department shall notify the railroad company which owns or operates the right-of-way that a grade crossing is not in compliance with this section.

(5) Every notification to a railroad company, as authorized under the provisions of this section shall be in writing transmitted by certified mail, return receipt requested, to the person listed as the registered agent of the railroad company for service of process. Upon receipt of the notice, the railroad company shall have thirty (30) days to comply with the notice before any civil action may be taken by the Department of Transportation.

(6) Any railroad company that fails to comply with the provisions of this section shall be subject to a civil fine of not to exceed Five Hundred Dollars ($500.00) per violation. The Department of Transportation shall have the exclusive authority to bring a civil action to enforce the provisions of this section. The fines shall be payable to the Department of Transportation.

(7) In any civil action to recover damages arising from or out of a highway railroad grade crossing accident, the failure of the Department of Transportation to inspect and evaluate a public highway railroad grade crossing and notify a railroad company of noncompliance, as provided in subsections (4) and (5) of this section, shall not be considered as comparative negligence and shall not be discoverable or admissible as evidence in any civil trial.

HISTORY:

Laws, 2004, ch. 448, § 1, eff from and after July 1, 2004.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in references to Code sections in subsection (3) by substituting "Sections 77-9-249, 63-3-1007, 63-3-1009, 63-3-1011 or 63-3-1013" for "Sections 77-9-249, 65-3-1007, 65-3-1009, 65-3-1011 or 65-3-1013." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3) by substituting "Section 77-9-249, 63-3-1007, 63-3-1009, 63-3-1011 or 63-3-1013" for "Sections 77-9-249, 63-3-1007, 63-3-1009, 63-3-1011 or 63-3-1013." The Joint Committee ratified the correction at its August 5, 2016, meeting.

JUDICIAL DECISIONS

ANALYSIS

2. Evidence.
3. Summary judgment.

2. Evidence.

Expert's opinion did not support appellants' claim that a train crew's view of a crossing was obstructed by vegetation in violation because his opinion regarding sight-distance deficiencies was based on calculations of a train traveling at 79 mph, while the evidence established that it had been traveling at approximately 49 mph as it approached the crossing. Estate of Bloodworth v. Ill. Cent. R.R. Co., 129 So. 3d 888, 2013 Miss. LEXIS 588 (Miss. 2013).

3. Summary judgment.

Railroad was properly granted summary judgment dismissing appellants' negligence claims, as the evidence established that the train was traveling below the speed limit, that the crew kept a proper lookout, that the train's whistle blew 900 feet before the crossing as required by statute, and that the emergency brake was activated before impact, and appellants did not support their claim that the railroad failed to clear vegetation near crossing or to maintain an adequate crossing warning system. Estate of Bloodworth v. Ill. Cent. R.R. Co., 129 So. 3d 888, 2013 Miss. LEXIS 588 (Miss. 2013).

§ 77-9-255. Repealed.

Repealed by Laws, 1992, ch. 496, § 72, eff from and after July 1, 1992.

[Codes, 1892, § 4314; 1906, § 4868; Hemingway's 1917, § 7653; 1930, § 7081; 1942, § 7857]

Editor's Notes —

Former § 77-9-255 required railroad gates across thoroughfares.

§ 77-9-257. Inspection of railroads.

The Mississippi Transportation Commission shall have every railroad inspected whenever it shall deem the same necessary, but at least once in each year. The results must be entered upon the minutes of the commission and embraced in its reports, and must embrace information as to the condition of the roadbed, rolling stock and depots, and such other facilities and equipment as the commission may deem proper. Whenever the commission shall find any roadbed, tunnel, switch or any part of a railroad track, or any rolling stock in actual use, in an unsafe condition, it shall direct the railroad company to make the necessary repairs.

HISTORY:

Codes, 1892, § 4316; 1906, § 4870; Hemingway's 1917, § 7655; 1930, § 7083; 1942, § 7859; Laws, 1992, ch. 496, § 67, eff from and after July 1, 1992.

Cross References —

Mississippi Transportation Commission, see § 65-1-3.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Flood control.

1. In general.

Sections 77-9-1 through 41 [§§ 77-9-1, 77-9-3, 77-9-7, 77-9-9, 77-9-11, 77-9-13, 77-9-17 through 77-9-25 and 77-9-41 have been repealed], 77-1-23, 77-1-49, 77-9-257, and 77-9-265 [repealed] vest in the Public Service Commission the authority to supervise and regulate common carrier railroads. While the line of authority between the local authorities and the Public Service Commission's regulation of railroads is not specifically defined by statute, there is a legislative intent that the Public Service Commission has general jurisdiction over common carrier railroads with an official responsibility to the public to see that railroads are operated safely, efficiently, and for the public's benefit. This responsibility which the Commission has to the entire state manifestly cannot be frustrated by any local ordinance or order, whether by a city or county. Hence, any reasonableness test of a zoning ordinance which applies to a railroad must take into account the obligation of the company to serve efficiently and economically all sections of the state dependent on it for services. Columbus & G. R. Co. v. Scales, 578 So. 2d 275, 1991 Miss. LEXIS 224 (Miss. 1991).

2. Flood control.

The Public Service Commission did not have jurisdiction to issue orders designed to impact flooding suffered by private residences situated several hundred feet away from a railroad right-of-way. Although §§ 77-9-1 [repealed], 77-9-9 [repealed], 77-9-257 and 77-9-259 confer authority upon the Commission to inspect and order the railroad to correct unsafe conditions at right-of-way crossings throughout rail service in the state, the statutes did not confer jurisdiction several hundred feet beyond the railroad right-of-way to impact flood control of private residences where there was no indication that the Commission had an interest in the safety considerations of the situation. Mississippi Public Service Com. v. Columbus & Greenville Ry. Co., 573 So. 2d 1343, 1990 Miss. LEXIS 802 (Miss. 1990).

§ 77-9-259. Repealed.

Repealed by Laws, 1992, ch. 496, § 72, eff from and after July 1, 1992.

[Codes, 1892, § 4315; 1906, § 4869; Hemingway's 1917, § 7654; 1930, § 7082; 1942, § 7858]

Editor's Notes —

Former § 77-9-259 provided for the inspection of insecure railroad bridges, trestles, tunnels, and roadbeds.

§ 77-9-261. Failure to submit to inspection; penalties.

If any officer or other employee of a railroad company shall fail to submit to the inspection of its engines or cars, or any trestle, bridge, roadbed, tracks, or any other equipment or facility owned or used by said railroad company, then such person shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00) or by confinement in the county jail for not more than thirty (30) days, or by both such fine and jail sentence.

HISTORY:

Codes, 1942, § 7806-06; Laws, 1970, ch. 429, § 6, eff from and after passage (approved March 12, 1970).

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 77-9-263. Repealed.

Repealed by Laws, 1992, ch. 496, § 72, eff from and after July 1, 1992.

[Codes, Hemingway's 1917, §§ 7699, 7700; 1930, § 7085; 1942, § 7861; Laws, 1912, ch. 152]

Editor's Notes —

Former § 77-9-263 provided for protection from the elements of tracks used for railroad repairs.

§§ 77-9-265 and 77-9-267. Repealed.

Repealed by Laws, 1997, ch. 460, § 14-15, eff from and after July 1, 1997.

§ 77-9-265. [Codes, 1906, § 4897; Hemingway's 1917, § 7681; 1930, § 7086; 1942, § 7862; Laws, 1908, ch. 91]

§ 77-9-267. [Codes, 1906, § 4896; Hemingway's 1917, § 7680; 1930, § 7088; 1942, § 7864; Laws, 1896, p. 75; 1908, ch. 90]

Editor's Notes —

Former § 77-9-265 authorized the Public Service Commission to prohibit the switching or standing of trains on certain tracks.

Former § 77-9-267 provided that trains need not stop before crossing where an interlocking or other safety device is used.

SERVICE AND FACILITIES

Sec.
77-9-281 through 77-9-319. Repealed.
77-9-321. Rights of shippers of livestock.
77-9-323. Repealed.

§§ 77-9-281 through 77-9-319. Repealed.

Repealed by Laws, 1984, ch. 512, §§ 4, 5, eff from and after July 1, 1984.

§ 77-9-281. [Codes, 1871, § 2423; 1880, § 1049; 1892, §§ 3550, 3551; 1906, §§ 4048, 4049; Hemingway's 1917, §§ 6672, 6673; 1930, §§ 6128, 6131; 1942, §§ 7780, 7783]

§ 77-9-283. [Codes, 1892, § 3558; 1906, § 4055; Hemingway's 1917, § 6683; 1930, § 6144; 1942, § 7796]

§ 77-9-285. [Codes, Hemingway's 1921 Supp. § 7712a; 1930, § 6145; 1942, § 7797; Laws, 1918, ch. 261]

§ 77-9-287. [Codes, Hemingway's 1917, § 7685; 1930, § 6146; 1942, § 7798; Laws, 1908, ch. 92]

§ 77-9-289. [Codes, Hemingway's 1917, §§ 7711, 7712; 1930, §§ 6147, 6148; 1942, §§ 7799, 7800; Laws, 1914, ch. 200]

§ 77-9-291. [Codes, Hemingway's 1917, § 7686; 1930, § 6149; 1942, § 7801; Laws, 1908, ch. 92]

§ 77-9-293. [Codes, 1880, § 1056; 1892, § 3568; 1906, § 4068; Hemingway's 1917, § 6697; 1930, § 6150; 1942, § 7802; Laws, 1908, ch. 195]

§ 77-9-295. [Codes, 1880, § 1057; 1892, § 3569; 1906, § 4069; Hemingway's 1917, § 6698; 1930, § 6151; 1942, § 7803]

§ 77-9-297. [Codes, 1892, § 4306; 1906, § 4860; Hemingway's 1917, § 7645; 1930, § 7070; 1942, § 7846]

§ 77-9-299. [Codes, 1892, § 4302; 1906, § 4854; Hemingway's 1917, § 7639; 1930, § 7071; 1942, § 7847]

§ 77-9-301. [Codes, 1892, § 4303; 1906, § 4855; Hemingway's 1917, § 7640; 1930, § 7072; 1942, § 7848; Laws, 1970, ch. 374]

§ 77-9-303. [Codes, 1906, § 4856; Hemingway's 1917, § 7641; 1930, § 7073; 1942, § 7849]

§ 77-9-305. [Codes, 1892, § 4304; 1906, § 4857; Hemingway's 1917, § 7642; 1930, § 7074; 1942, § 7850]

§ 77-9-307. [Codes, 1892, § 4311; 1906, § 4865; Hemingway's 1917, § 7650; 1930, § 7076; 1942, § 7852]

§ 77-9-309. [Codes, 1892, § 4309; 1906, § 4863; Hemingway's 1917, § 7648; 1930, § 7077; 1942, § 7853]

§ 77-9-311. [Codes, 1892, § 4310; 1906, § 4864; Hemingway's 1917, § 7649; 1930, § 7078; 1942, § 7854]

§ 77-9-313. [Codes, 1892, § 2313; 1906, § 4867; Hemingway's 1917, § 7652; 1930, § 7080; 1942, § 7856]

§ 77-9-315. [Codes, 1892, §§ 4305, 4312; 1906, §§ 4858, 4866; Hemingway's 1917, §§ 7643, 7651; 1930, §§ 7075, 7079; 1942, §§ 7851, 7855; Laws, 1970, ch. 374, § 6]

§ 77-9-317. [Codes, 1906, § 4895; Hemingway's 1917, § 7679; 1930, § 7087; 1942, § 7863; Laws, 1898, p. 96; 1908, ch. 89]

§ 77-9-319. [Codes, 1892, § 4298; 1906, § 4850; Hemingway's 1917, § 7635; 1930, § 7108; 1942, § 7883]

Editor's Notes —

Former Section 77-9-281 pertained to passenger trains stopping at county seats having depots.

Former Section 77-9-283 required regular fares to be charged passengers boarding trains at depots not offering ticket service.

Former Section 77-9-285 required railroads to keep mileage books at all ticket stations.

Former Section 77-9-287 provided that mileage tickets were good for all members of a family.

Former Section 77-9-289 required railroads to pull mileage or penny script books between points within the state.

Former Section 77-9-291 related to fraudulent use of mileage forfeit.

Former Section 77-9-293 concerned checking of baggage for passengers.

Former Section 77-9-295 permitted double damages for injury or loss of baggage.

Former Section 77-9-297 required a sufficiency of passenger cars for passengers.

Former Section 77-9-299 related to the establishment and maintenance of depots.

Former Section 77-9-301 required the promulgation of rules and regulations concerning passenger depots.

Former Section 77-9-303 required cuspidors for depots and passenger coaches.

Former Section 77-9-305 required bulletin boards to be placed in reception rooms or depots.

Former Section 77-9-307 required every railroad to provide adequate depot, storage, and platform facilities.

Former Section 77-9-309 concerned the location and relocation of depots.

Former Section 77-9-311 regulated the erection of union passenger depots and transfer stations.

Former Section 77-9-313 regulated the hours and conditions of reception rooms at passenger stations.

Former Section 77-9-315 required the public service commission to inspect stations, depots, and reception rooms.

Former Section 77-9-317 required the connection of railroad tracks between carriers.

Former Section 77-9-319 pertained to delivery of cars to connecting lines.

§ 77-9-321. Rights of shippers of livestock.

A person who has chartered a car for the purpose of transporting livestock shall have the right to ship in the same car, at his own risk, different kinds of livestock. The shipper shall have the right to load said car by separating his stock with gates or bars, or by putting upper-decks at his own expense and without injury to the car; the shipper shall be responsible for all damage that may occur by reason of its being so loaded. Any railroad company refusing, without sufficient reason, to move or transport a car so loaded, shall be liable to the party injured thereby to double damages, to be recovered before any court having jurisdiction.

HISTORY:

Codes, 1892, § 3564; 1906, § 4064; Hemingway's 1917, § 6693; 1930, § 7109; 1942, § 7884.

JUDICIAL DECISIONS

1. In general.

A recovery for damages for a railway company's refusal to bill through to its destination a double-decked car of livestock is not defeated by an informal pleading in justice court where the action was originally begun for double damages. Hallum v. Mobile & O. R. Co., 24 So. 909 (Miss. 1899).

RESEARCH REFERENCES

Am. Jur.
13 Am. Jur. 2d, Carriers §§ 354 et seq.

§ 77-9-323. Repealed.

Repealed by Laws, 1997, ch. 460, § 16, eff from and after July 1, 1997. [Codes, 1930, §§ 7110, 7111; 1942, §§ 7885, 7886; Laws, 1928, ch. 167]

Editor's Notes —
Former § 77-9-323 required that every railroad weigh each carload of cottonseed it transports.

CONDUCT OF PASSENGERS [REPEALED]

Sec.
77-9-341 through 77-9-349. Repealed.

§§ 77-9-341 through 77-9-349. Repealed.

Repealed by Laws, 1984, ch. 512, § 4, eff from and after July 1, 1984.

[Codes, 1892, § 3563; 1906, § 4063; Hemingway's 1917, §§ 6688-6692; 1930, §§ 6136-6140; 1942, §§ 7788-7792; Laws, 1919, chs. 211 and 133]

Editor's Notes —
Former Sections 77-9-341 through 77-9-349 pertained to conduct of passengers upon trains.

RATES

Sec.
77-9-371. Repealed.
77-9-373. Civil damages recoverable from railroad guilty of extortion.
77-9-375. Repealed.
77-9-377 and 77-9-379. Repealed.
77-9-381 through 77-9-387. Repealed.

§ 77-9-371. Repealed.

Repealed by Laws, 1992, ch. 496, § 72, eff from and after July 1, 1992.

[Codes, 1892, § 4287; 1906, § 4839; Hemingway's 1917, § 7624; 1930, § 7091; 1942, § 7867]

Editor's Notes —
Former § 77-9-371 prohibited extortion and invidious discrimination with respect to railroad travel.

§ 77-9-373. Civil damages recoverable from railroad guilty of extortion.

A party injured may recover of a railroad corporation or the person managing a railroad who is guilty of extortion as defined in Section 77-9-371, twice the amount of damages sustained by the overcharge or discrimination, as the case may be.

HISTORY:

Codes, 1892, § 4288; 1906, § 4840; Hemingway's 1917, § 7625; 1930, § 7092; 1942, § 7868.

Editor's Notes —

Section 77-9-371 referred to in this section was repealed by Laws, 1992, ch. 496, § 72, eff from and after July 1, 1992.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Liability.
3. Damages and interest.

1. In general.

This section [Code 1942, § 7868] is highly penal and does not apply to cases not strictly within its terms. Gilliland v. Illinois C. R. Co., 81 Miss. 41, 32 So. 916, 1902 Miss. LEXIS 123 (Miss. 1902).

2. Liability.

Where a railroad company charges nothing more for services rendered in the transportation of freight than is allowed by law, it is not liable under this section [Code 1942, § 7868] or under § 4287, Code 1892 (Code 1942, § 7867), although it collected from the consignee in addition a sum demanded of and paid by it to a connecting carrier from whom it received the goods as the connecting carrier's charges for delivery to it. Gilliland v. Illinois C. R. Co., 81 Miss. 41, 32 So. 916, 1902 Miss. LEXIS 123 (Miss. 1902).

3. Damages and interest.

Statute providing for recovery of twice amount of damages sustained by carrier's overcharge or discrimination held to exclude interest from date of overcharge until date of judgment. Gulf & S. I. R. Co. v. Laurel Oil & Fertilizer Co., 172 Miss. 630, 172 Miss. 634, 158 So. 778, 159 So. 838, 160 So. 564, 1935 Miss. LEXIS 95 (Miss.), amended, 172 Miss. 654, 159 So. 838 (Miss. 1935).

In action against carrier for damages on account of overcharges which was brought after expiration of limitation, penalty of double damages could not be recovered, and interest should be calculated from date of judgment in trial court, not from date of judgment in supreme court. Gulf & S. I. R. Co. v. Laurel Oil & Fertilizer Co., 172 Miss. 630, 172 Miss. 634, 158 So. 778, 159 So. 838, 160 So. 564, 1935 Miss. LEXIS 95 (Miss.), amended, 172 Miss. 654, 159 So. 838 (Miss. 1935).

An express company, discriminating out of distinct purpose, is liable to the party discriminated against for twice the damages sustained. American Express Co. v. Crawley, 88 Miss. 525, 41 So. 261, 1906 Miss. LEXIS 173 (Miss. 1906).

RESEARCH REFERENCES

Am. Jur.

13 Am. Jur. 2d, Carriers §§ 259 through 261.

5A Am. Jur. Pl & Pr Forms (Rev), Carriers, Form 151.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 132.

CJS.

13 C.J.S., Carriers § 351.

§ 77-9-375. Repealed.

Repealed by Laws, 1997, ch. 460, § 17, eff from and after July 1, 1997.

[Codes, 1892, § 4289; 1906, § 4841; Hemingway's 1917, § 7626; 1930, § 7093; 1942, § 7869]

Editor's Notes —

Former § 77-9-375 provided for criminal punishment of railroads found guilty of extortion.

§§ 77-9-377 and 77-9-379. Repealed.

Repealed by Laws, 1984, ch. 512, § 4, eff from and after July 1, 1984.

§ 77-9-377. [Codes, 1892, § 4292; 1906, § 4844; Hemingway's 1917, § 7629; 1930, § 7097; 1942, § 7873; Laws, 1916, ch. 233]

§ 77-9-379. [Codes, 1892, § 4293; 1906, § 4845; Hemingway's 1917, § 7630; 1930, § 7098; 1942, § 7874]

Editor's Notes —

Former Section 77-9-377 prohibited the giving of rebates.

Former Section 77-9-379 pertained to punishment for making rebates and granting free transportation contrary to law.

§§ 77-9-381 through 77-9-387. Repealed.

Repealed by Laws, 1997, ch. 460, § 18-21, eff from and after July 1, 1997.

§ 77-9-381. [Codes, 1892, § 4294; 1906, § 4846; Hemingway's 1917, § 7631; 1930, § 7099; 1942, § 7875]

§ 77-9-383. [Codes, 1892, § 4295; 1906, § 4847; Hemingway's 1917, § 7632; 1930, § 7100; 1942, § 7876]

§ 77-9-385. [Codes, 1892, § 4318; 1906, § 4872; Hemingway's 1917, § 7657; 1930, § 7103; 1942, § 7879]

§ 77-9-387. [Codes, 1892, § 4297; 1906, § 4849; Hemingway's 1917, § 7634; 1930, § 7102; 1942, § 7878]

Editor's Notes —

Former § 77-9-381 authorized the Public Service Commission to prescribe the manner and location of posting tariffs of charges.

Former § 77-9-383 provided for a penalty for defacing posted material.

Former § 77-9-385 provided for the classification of freight.

Former § 77-9-387 provided that the Public Service Commission shall docket, hear and determine all complaints concerning schedules and tariffs.

REPORTS
[REPEALED]

Sec.
77-9-411 through 77-9-415. Repealed.

§§ 77-9-411 through 77-9-415. Repealed.

Repealed by Laws, 1992, ch. 496, § 72, eff from and after July 1, 1992.

§ 77-9-411. [Codes, 1892, § 4320; 1906, § 4874; Hemingway's 1917, § 7659; 1930, § 7052; 1942, § 7828]

§ 77-9-413. [Codes, 1892, § 4321; 1906, § 4875; Hemingway's 1917, § 7660; 1930, § 7053; 1942, § 7829; Laws, 1918, ch. 147]

§ 77-9-415. [Codes, 1892, § 4322; 1906, § 4876; Hemingway's 1917, § 7661; 1930, § 7054; 1942, § 7830]

Editor's Notes —

Former § 77-9-411 provided for quarterly returns of receipts and expenditures, by railroads, to the Public Service Commission.

Former § 77-9-413 provided for annual reports by railroads to the Public Service Commission.

Former § 77-9-415 required affidavits to be made in support of railroad reports and returns.

ACCIDENTS; LIABILITY IN TORT

Sec.
77-9-431. Notice of accidents.
77-9-433. Repealed.
77-9-435. Railroads liable for negligence and mismanagement of employees, and mismanagement of engines.
77-9-437 and 77-9-439. Repealed.

§ 77-9-431. Notice of accidents.

Each railroad shall report accidents to the Mississippi Department of Transportation in the same manner, and utilizing forms which provide the same information, as required for accident reports by the Federal Railroad Act. The same damage thresholds prerequisite to reports under the Federal Railroad Act shall apply with respect to the making of reports to the Mississippi Department of Transportation.

HISTORY:

Codes, 1892, § 4307; 1906, § 4861; Hemingway's 1917, § 7646; 1930, § 7089; 1942, § 7865; Laws, 1992, ch. 496, § 68, eff from and after July 1, 1992.

Cross References —

Reports of motor vehicle accidents generally, see Article 9 of Chapter 3 of Title 63.

Mississippi Department of Transportation, see § 65-1-2.

Reports of motor carrier accidents, see § 77-7-181.

Federal Aspects—

Provisions of federal law governing reporting of accidents, see 49 USCS §§ 20101 et seq.

RESEARCH REFERENCES

ALR.

Liability of land carrier to passenger who becomes victim of third party's assault on or about carriers' vehicle or premises. 34 A.L.R.4th 1054.

§ 77-9-433. Repealed.

Repealed by Laws, 1997, ch. 460, § 22, eff from and after July 1, 1997.

[Codes, 1892, § 4308; 1906, § 4862; Hemingway's 1917, § 7647; 1930, § 7090; 1942, § 7866]

Editor's Notes —

Former § 77-9-433 required the Public Service Commission to visit the scene of a railroad accident.

§ 77-9-435. Railroads liable for negligence and mismanagement of employees, and mismanagement of engines.

Every railroad company shall be liable for all damages which may be sustained by any person in consequence of the neglect or mismanagement of any of its agents, engineers or clerks, or in consequence of the mismanagement of its engines.

HISTORY:

Codes, 1857, ch. 35, art. 43; 1871, § 2429; 1880, § 1054; 1892, § 3557; 1906, § 4054; Hemingway's 1917, § 6678; 1930, § 6152;

1942, § 7804; Laws, 1912, ch. 240.

Cross References —

Actions for wrongful death generally, see § 11-7-13.

Comparative negligence rule generally, see § 11-7-15.

Negligence and contributory negligence being jury questions, see § 11-7-17.

Injuries to livestock in transit being prima facie evidence of negligence, see § 13-1-121.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Persons to whom duty is owed.
3. Standard of care.
4. Liability when person jumps from train.
5. Actions; pleadings.
6. Miscellaneous.

1. In general.

If there be no conflict in the evidence the question whether a servant whose wrongful act caused an injury to a stranger was acting within the scope of his employment is for the court, if there be conflict the question is for a jury. Barmore v. Vicksburg, S. & P. R. Co., 85 Miss. 426, 38 So. 210, 1904 Miss. LEXIS 192 (Miss. 1904).

Proof of the circumstances connected with an injury resulting from the running of a train removes all ground for resorting to legal presumption and mere conjecture will not support a judgment in any case. Owen v. Illinois C. R. Co., 77 Miss. 142, 24 So. 899, 1899 Miss. LEXIS 40 (Miss. 1899).

The statute is but declaratory of the common law. Mobile & O. R. Co. v. Gray, 62 Miss. 383, 1884 Miss. LEXIS 89 (Miss. 1884).

This section [Code 1942, § 7804] does not embrace employees of the railroad company; they are provided for in the section dealing with fellow servants (Code 1942, § N. O., J. & G. N. R. R. Co. v. Hughes, 49 Miss. 258, 1873 Miss. LEXIS 113 (Miss. 1873).

2. Persons to whom duty is owed.

One who goes upon train to assist passenger in boarding train with luggage is entitled to have railroad company exercise ordinary care for his safety and protection while he is entering car, while he is in it, and while he is leaving it, notwithstanding he is merely licensee or invitee, and not a passenger. McClellan v. Illinois C. R. Co., 204 Miss. 432, 37 So. 2d 738, 1948 Miss. LEXIS 379 (Miss. 1948).

A railroad company owes nothing to a trespasser except to avoid the infliction of injury wilfully or wantonly. Christian v. Illinois C. R. Co., 71 Miss. 237, 15 So. 71, 1893 Miss. LEXIS 203 (Miss. 1893); Alabama G. S. R. Co. v. Harris, 71 Miss. 74, 14 So. 263, 1893 Miss. LEXIS 162 (Miss. 1893); Dooley v. Mobile & O. R. Co., 69 Miss. 648, 12 So. 956, 1892 Miss. LEXIS 23 (Miss. 1892); Louisville, N. O. & T. R. Co. v. Williams, 69 Miss. 631, 12 So. 957, 1892 Miss. LEXIS 24 (Miss. 1892).

3. Standard of care.

Railroad company owed plaintiff, who was assisting passenger with baggage, duty not to start train until he had time to get off when those in charge of train knew his purpose and that he intended to get off, and if train was started while his intention to get off was momentarily forgotten by those in charge, it was their duty to offer to stop train. McClellan v. Illinois C. R. Co., 204 Miss. 432, 37 So. 2d 738, 1948 Miss. LEXIS 379 (Miss. 1948).

A party can recover for damages to stock by a railroad only when it results from "mismanagement" or "neglect" of the company's agents or servants. Memphis & C. R. Co. v. Orr, 43 Miss. 279, 1870 Miss. LEXIS 37 (Miss. 1870); Raiford v. Mississippi C. R. Co., 43 Miss. 233, 1870 Miss. LEXIS 31 (Miss. 1870); Memphis & C. R. Co. v. Blakeney, 43 Miss. 218, 1870 Miss. LEXIS 28 (Miss. 1870); New Orleans J. & G. N. R. Co. v. Enochs, 42 Miss. 603, 1869 Miss. LEXIS 32 (Miss. 1868).

4. Liability when person jumps from train.

Railroad company cannot defend action for injuries to plaintiff on ground plaintiff should have remained on train until it stopped at next station when train porter opened door and told plaintiff to jump, and conductor had agreed to let plaintiff off at that station. McClellan v. Illinois C. R. Co., 204 Miss. 432, 37 So. 2d 738, 1948 Miss. LEXIS 379 (Miss. 1948).

Evidence that plaintiff in presence of conductor of train was assured by porter he had time to assist passenger with baggage before train started, that conductor, after train started, assured him he could leave train and that porter opened door and told plaintiff to jump, was sufficient to show that conductor understood and acquiesced in plaintiff's undertaking to leave train without stopping train for that purpose and opening of door was invitation for plaintiff to jump. McClellan v. Illinois C. R. Co., 204 Miss. 432, 37 So. 2d 738, 1948 Miss. LEXIS 379 (Miss. 1948).

A passenger on a freight train not designated to carry passengers who jumped off at a station to which he had purchased a ticket on failure to stop while it was running at six or eight miles per hour, was guilty of contributory negligence precluding a recovery, though the company was guilty of gross negligence. Sunflower Land & Mfg. Co. v. Watts, 77 Miss. 56, 25 So. 863, 1899 Miss. LEXIS 51 (Miss. 1899).

5. Actions; pleadings.

As general rule, where there is breach both of contract and of duty imposed by law, as in case of loss or injury by common carrier, plaintiff may elect to sue either in contract or in tort. New Orleans & N. E. R. Co. v. Elias, 205 Miss. 658, 39 So. 2d 274, 1949 Miss. LEXIS 457 (Miss. 1949).

Tort is the natural and habitual foundation of action for breach of ordinary contract of carriage, and declaration will be so construed, unless facts of case clearly show that plaintiff has elected to sue on contract. New Orleans & N. E. R. Co. v. Elias, 205 Miss. 658, 39 So. 2d 274, 1949 Miss. LEXIS 457 (Miss. 1949).

Rules of pleading in common law cases prevailing in state courts control action against carrier on liability for interstate shipment imposed by Carmack Amendment to Interstate Commerce Act, since act has no specifications as to pleadings in such causes. New Orleans & N. E. R. Co. v. Elias, 205 Miss. 658, 39 So. 2d 274, 1949 Miss. LEXIS 457 (Miss. 1949).

In action against carrier for damage to interstate shipment, Carmack Amendment to Interstate Commerce Act may be invoked although declaration does not aver that any connecting carrier exists, or show any facts to allow Carmack Amendment to operate but asserts pure common law claim, where facts, as shown in evidence, make it clear that cause of action comes within sphere of statute. New Orleans & N. E. R. Co. v. Elias, 205 Miss. 658, 39 So. 2d 274, 1949 Miss. LEXIS 457 (Miss. 1949).

6. Miscellaneous.

In action by shipper against initial carrier for damage to carload of rice shipped in interstate commerce, defendant is entitled to directed verdict if it appears either from proof of plaintiff or defendant that claim has not been filed within time prescribed by Carmack Amendment to Interstate Commerce Act, 49 USCS § 20(11), whether action is on contract or in tort arising out of breach of duty owing by carrier to shipper. New Orleans & N. E. R. Co. v. Elias, 205 Miss. 658, 39 So. 2d 274, 1949 Miss. LEXIS 457 (Miss. 1949).

RESEARCH REFERENCES

ALR.

Carrier's liability based on serving intoxicants to passenger. 76 A.L.R.3d 1218.

Liability of land carrier to passenger who becomes victim of third party's assault on or about carriers' vehicle or premises. 34 A.L.R.4th 1054.

Am. Jur.

14 Am. Jur. 2d, Carriers §§ 877, 880 and 884.

65 Am. Jur. 2d, Railroads §§ 215 et seq.

21 Am. Jur. Pl & Pr Forms (Rev), Railroads, Forms 121 et seq. (injuries to persons-in general), 201 et seq. (condition and maintenance of equipment and tracks).

§§ 77-9-437 and 77-9-439. Repealed.

Repealed by Laws, 1992, ch. 496, § 72, eff from and after July 1, 1992.

§ 77-9-437. [Codes, Hemingway's 1917, § 6679; 1930, § 6153; 1942, § 7805; Laws, 1912, ch. 151]

§ 77-9-439. [Codes, 1892, § 3559; 1906, § 4056; Hemingway's 1917, § 6684; 1930, § 6154; 1942, § 7806; Laws, 1908, ch. 194]

Editor's Notes —

Former § 77-9-437 made railroads liable for damages from fires caused by locomotives.

Former § 77-9-439 abolished the fellow-servant rule as to railroad employees.

SALES, MORTGAGES, AND LEASES [REPEALED]

Sec.
77-9-461 through 77-9-467. Repealed.

§§ 77-9-461 through 77-9-467. Repealed.

Repealed by Laws, 1984, ch. 512, § 6, eff from and after July 1, 1984.

[Codes, 1880, § 1033; 1892, § 3567; 1906, §§ 4067, 4103-4105; Hemingway's 1917, §§ 6696, 6732-6734; 1930, §§ 6099, 6101-6103; 1942, §§ 7751, 7753-7755; Laws, 1910, ch. 212]

Editor's Notes —

Former Sections 77-9-461 through 77-9-467 pertained to the sale, mortgage, and lease of railroad equipment.

ADMINISTRATION AND ENFORCEMENT

Sec.

77-9-481. Duties of railroad inspectors.
77-9-483. Training of railroad inspectors.
77-9-485. Authority of railroad inspectors.
77-9-487. Purchase of necessary equipment authorized.
77-9-489. Payment of salaries and expenses from commission's regulation fund; funding of agency expenses; deposit of monies into State General Fund.
77-9-491. Cooperation with other state agencies authorized.
77-9-493. Tax for regulation of railroads.

§ 77-9-481. Duties of railroad inspectors.

The inspectors, employed pursuant to the authority granted in Section 65-1-173, shall be responsible for enforcing and investigating all violations of the railroad laws, and the rules, regulations and general orders of the Mississippi Transportation Commission promulgated thereunder. In the performance of their duties such employees shall give particular attention to the enforcement of the commission's safety rules and regulations; blocking of rights-of-way; the inspection of all equipment, rights-of-way, roadbed and tracks; and the requirement respecting certificate of public convenience and necessity, permits or other laws affecting the operation of the railroad.

HISTORY:

Codes, 1942, § 7806-03; Laws, 1970, ch. 429, § 3; Laws, 1992, ch. 496, § 69; Laws, 1997, ch. 460, § 23, eff from and after July 1, 1997.

Cross References —

Mississippi Transportation Commission, see § 65-1-3.

§ 77-9-483. Training of railroad inspectors.

After selection the inspectors shall go through thirty (30) days of intensive instruction of the laws of this state pertaining to the State Tax Commission, the Department of Public Safety, and the State Mississippi Department of Transportation, together with rules and regulations of all of these departments and the laws of this state pertaining to arrests.

HISTORY:

Codes, 1942, § 7806-03; Laws, 1970, ch. 429, § 3; Laws, 1987, ch. 343, § 12; Laws, 1992, ch. 496, § 70, eff from and after July 1, 1992.

Editor's Notes —

Section 27-3-4 provides that the terms “ ‘Mississippi State Tax Commission,’ ‘State Tax Commission,’ “Tax Commission’ and ‘commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References —

Mississippi Department of Transportation, see § 65-1-2.

Public Service Commission Regulation Fund, see § 77-1-6.

§ 77-9-485. Authority of railroad inspectors.

All inspectors on duty shall wear uniforms as prescribed by the Mississippi Transportation Commission, shall have the right to bear arms, and shall have authority to make arrests, and to stop and hold any train and the contents thereof which is being operated in violation of the railroad laws or the commission's rules, regulations or general orders promulgated thereunder. No train shall be stopped except by order of the commission or by any member thereof.

HISTORY:

Codes, 1942, § 7806-04; Laws, 1970, ch. 429, § 4; Laws, 1992, ch. 496, § 71, eff from and after July 1, 1992.

Cross References —

Mississippi Transportation Commission, see § 65-1-3.

§ 77-9-487. Purchase of necessary equipment authorized.

The Mississippi Transportation Commission is hereby authorized and empowered to purchase all necessary equipment to enforce the provisions of the railroad laws of the State of Mississippi and to pay for the same out of the "Mississippi Transportation Commission Regulation Fund."

HISTORY:

Codes, 1942, § 7806-08; Laws, 1970, ch. 429, § 8; Laws, 1987, ch. 343, § 13; Laws, 1997, ch. 460, § 24, eff from and after July 1, 1997.

Cross References —

Public Service Commission Regulation Fund, see § 77-1-6.

§ 77-9-489. Payment of salaries and expenses from commission's regulation fund; funding of agency expenses; deposit of monies into State General Fund.

The salaries of all employees authorized to enforce the provisions of the railroad laws, and the reasonable and necessary expenses of such employees, shall be paid out of the special fund in the State Treasury designated as the commission's regulation fund upon the requisition and warrant in the manner provided by law. An itemized account shall be kept of all receipts and expenditures and reported to the Legislature by the commission.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:
Codes, 1942, § 7806-09; Laws, 1970, ch. 429, § 9; Laws, 1987, ch. 343, § 14; Laws, 2016, ch. 459, § 62, eff from and after July 1, 2016; Laws, 2018, ch. 332, § 16, eff from and after passage (approved March 8, 2018).

Editor's Notes —
Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes —
The 2018 amendment, effective March 8, 2018, substituted "designated as the commission's regulation fund" for "designated as the 'Public Service Commission Regulation Fund'" in the first paragraph.

Cross References —
Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

§ 77-9-491. Cooperation with other state agencies authorized.

For the purpose of administering and enforcing the provisions of the railroad laws, the public service commission shall have the power, and is directed to cooperate with and use the services of the members of the highway safety patrol and the inspectors employed by the motor vehicle comptroller. However, in utilizing such personnel the commission shall not interfere with or impede the performance of such personnel of the duties and responsibilities otherwise assigned to them.

HISTORY:
Codes, 1942, § 7806-05; Laws, 1970, ch. 429, § 5, eff from and after passage (approved March 12, 1970).

§ 77-9-493. Tax for regulation of railroads.

All reasonable and necessary operating expenses of the administration of the duties imposed by law upon the Mississippi Transportation Commission, including the salaries of personnel, in its regulation and supervision of railroad companies operating within the State of Mississippi, shall be provided through the levying of the following tax. The amount of said tax is the sum of Two Hundred One Thousand Dollars ($201,000.00) per year. Such tax shall be prorated by the State Tax Commission among the railroad companies which are subject to the tax levied by this section each year, according to the railroad track miles of each of such railroad company operated during the calendar year preceding the assessment. Each railroad company which is subject to the tax levied by this section shall file a statement of such railroad track miles by April 1 of each year showing the railroad track miles operated in the preceding year's operation. "Railroad track miles" means the miles of road of the railroad system within this state. These statements of railroad track miles shall be filed with the commission and a copy thereof filed with the State Tax Commission. The State Tax Commission shall thereupon calculate the pro rata amount of tax to be paid by each of said railroad companies in order to provide the total amount above stated and shall thereupon submit a statement thereof to the respective railroad companies and the amounts shown due in such statements to the respective railroad companies shall be paid by the respective railroad companies within thirty (30) days thereafter to the State Tax Commission. The

State Tax Commission shall pay such funds into the State Treasury on the same day collected to the credit of the Mississippi Transportation Commission.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other duties and requirements imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the Tax Commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the Mississippi Sales Tax Law except where there is a conflict, then the provisions of this chapter shall control.

The Mississippi Transportation Commission and the State Tax Commission are hereby authorized to use all tax returns of any such railroad companies available to them and to make such audits as may be deemed necessary of any and all records of such railroad companies in order to correctly determine the amount of railroad track miles. It shall be the duty of the Department of Finance and Administration to advise the commission of the amount of money on hand from time to time. All expenses of the Mississippi Transportation Commission in its regulation and supervision of railroad companies, including salaries of personnel, shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration. Said warrants shall be issued upon requisition signed by the executive secretary or the chairman and said requisition shall show upon its face the purpose for which the payment is being made, by reference to the purchase order and/or invoice number and objective code. It shall be unlawful for any person to withdraw any money from said fund other than by requisition issued as herein provided. A record of all requisitions issued by the Mississippi Transportation Commission showing to whom, for what purpose, and date issued, shall be placed upon the minute books of the commission and shall become a part of the official record of said commission.

The books and accounts of the Mississippi Transportation Commission shall be audited at the end of each fiscal year, and at any other time deemed necessary, by the State Auditor and a copy of such audits shall be furnished to the Governor and the Mississippi Transportation Commission. The State Auditor may prescribe such further accounting procedure as he deems necessary for the withdrawal of funds by the said commission from said fund. All requisitions drawn in compliance with this section shall be honored by the Department of Finance and Administration and the funds disbursed in accordance therewith. The Mississippi Transportation Commission shall file a report at each regular session of the Legislature showing the expenditure of all funds by the Mississippi Transportation Commission. All proceeds of the above-mentioned tax are hereby allocated to the Mississippi Transportation Commission for the purposes of this section. In the event the funds provided by said tax exceed the amount necessary for the purposes of this section at the end of each year, the Mississippi Transportation Commission shall certify the amount which the said commission estimates will be necessary for the commission for the next year to the State Tax Commission, and the State Tax Commission shall reduce the tax imposed to such amount for the next year and shall collect the proportionate amount thereof as above provided.

HISTORY:

Codes, 1942, § 7806-11; Laws, 1970, ch. 428, § 1; Laws, 1972, ch. 327, § 1; Laws, 1973, ch. 441, § 1; Laws, 1977, ch. 434; Laws, 1979, ch. 443; Laws, 1980, ch. 559, § 2; Laws, 1984, ch. 478, § 32; Laws, 1987, ch. 343, § 15; Laws, 1992, ch. 451, § 1; Laws, 1993, ch. 356, § 1; Laws, 1998, ch. 458, § 5, eff from and after passage (approved March 23, 1998).

Editor's Notes —

Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides that, for purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing.

Laws of 1984, ch. 478, § 35, provides that "The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that where ever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 1992, ch. 451, § 2, effective from and after January 1, 1993, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 9, Title 77, Mississippi Code of 1972, before the date on which this act becomes effective whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 9, Title 77, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1993, ch. 356, § 2, effective from and after passage (approved March 12, 1993) provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Section 77-9-493, Mississippi Code of 1972, which is the law levying a tax for expenses incurred in the regulation of railroad companies in Mississippi, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of such law are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such law before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such law."

Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' "Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References —

Tax exemption for bonds of county or regional railroad authorities and interest and income therefrom, see § 19-29-29.

Tax exemption for county and regional railroad authorities, see § 19-29-39.

Mississippi Sales Tax Law, see § 27-65-1, et seq.

Mississippi Transportation Commission, see § 65-1-2.

Public Service Commission Regulation Fund, see § 77-1-6.

Federal Aspects—

Federal Railroad Safety Act of 1970, see 45 USCS §§ 421 et seq.

RAILROAD POLICE OFFICERS

Sec.	
77-9-501.	Short title.
77-9-503.	Definitions.
77-9-505.	Appointment of officers; oath; identification; exercise of powers of arrest and right to bear firearms.
77-9-507.	Handling of persons arrested by officers.
77-9-509.	Liability of railroad for acts of officer; indemnification.
77-9-511.	Powers of officers appointed and commissioned in other states.
77-9-513.	Fee for commission; bond; "hold harmless" provision.
77-9-515.	Termination of powers and authority of officers.
77-9-517.	No waiver of sovereign immunity of state.

§ 77-9-501. Short title.

Sections 77-9-501 through 77-9-517 shall be cited as "The Mississippi Railroad Police Law of 1976."

HISTORY:

Laws, 1976, ch. 441, § 1, eff from and after July 1, 1976.

§ 77-9-503. Definitions.

For purposes of Sections 77-9-501 through 77-9-517, unless the context requires otherwise, the following terms shall have the meanings ascribed herein:

(a) "Railroad" means a common carrier by railroad.

(b) "Qualified person" means a person who:

(i) has met all the educational and training requirements for railroad police in this state which shall be approved by the Mississippi Law Enforcement Training Academy; and

(ii) is of good moral character and has not been convicted of any crime involving moral turpitude.

HISTORY:

Laws, 1976, ch. 441, § 2, eff from and after July 1, 1976.

§ 77-9-505. Appointment of officers; oath; identification; exercise of powers of arrest and right to bear firearms.

(1) Upon request by the chief police officer of any railroad located wholly or partially within this state, the Commissioner of Public Safety may appoint and commission as a railroad police officer any qualified person named by such chief police officer; provided, however, that the Commissioner of Public Safety may refuse to appoint or may rescind the appointment of anyone. Any such

railroad police officer so appointed shall at all times be answerable and responsible to the Commissioner of Public Safety.

(2) A railroad police officer appointed and commissioned as provided in subsection (1) of this section shall, before entering upon his duties as such officer, take the oath of office prescribed by Section 268, Mississippi Constitution of 1890, which shall be endorsed upon his commission. The commission, with the oath endorsed upon it, shall be recorded in the office of the Commissioner of Public Safety.

(3) A railroad police officer appointed and commissioned pursuant to the provisions of Sections 77-9-501 through 77-9-517 shall, while engaged in the performance of his duties, carry on his person a badge identifying him as a police officer of the railroad and an identification card issued by the railroad and countersigned by the Commissioner of Public Safety. When in uniform each such railroad police officer shall wear his badge in plain view.

(4) A railroad policeman may exercise the same powers of arrest and the right to bear firearms that may be exercised by any state, municipal or other police officer in this state, but only with respect to offenses committed against property owned by or in the possession of the railroad or against any person arising out of an offense committed against said railroad on railroad property, or against any employee of the railroad engaged in the performance of his duties. Railroad property for the purposes of Sections 77-9-501 through 77-9-517 shall be construed to mean only property owned by or in possession of the railroad on railroad rights-of-way or switching yards. Any right granted under this subsection in no way relieves the requirements of appropriate affidavit and warrant for arrest from the appropriate jurisdiction and authority pursuant to the laws of this state.

(5) Any person who is trained as a railroad police officer at the Mississippi Law Enforcement Training Academy shall be required to pay at least an amount equal to the per student cost of operation of said academy as tuition.

HISTORY:

Laws, 1976, ch. 441, § 3; Laws, 1988, ch. 339, eff from and after July 1, 1988.

Cross References —

Oath of office, see Miss. Const. Art. 14, § 268.

Persons entitled to carry deadly weapons, see § 97-37-7.

Arrests generally, see Chapter 3 of Title 99.

RESEARCH REFERENCES

ALR.

Liability of one contracting for private police or security service for acts of personnel supplied. 38 A.L.R.3d 1332.

Am. Jur.

22 Am. Jur. Pl & Pr Forms (Rev), Sheriffs, Police, and Constables, Forms 132, 134.

CJS.

74 C.J.S., Railroads §§ 42-46.

§ 77-9-507. Handling of persons arrested by officers.

A person arrested by a railroad police officer shall be forthwith taken to the sheriff of the county in which the offense was committed. Such person arrested shall then be handled or processed and accorded the same treatment as persons arrested by any other police officer of this state. After the delivery of the arrested person to the sheriff, the railroad police officer shall have no further authority as to the custody or prosecution of such arrested person.

HISTORY:
Laws, 1976, ch. 441, § 4, eff from and after July 1, 1976.

Cross References —
Taking of arrested persons before proper officer without delay, see § 99-3-17.

Post arrest release on written notice to appear in court at later date, see § 99-3-18.

§ 77-9-509. Liability of railroad for acts of officer; indemnification.

The railroad by the act of requesting the appointment of any such railroad police officer shall be liable and responsible for all acts of such policeman while he is acting or purporting to act under the provisions of Sections 77-9-501 through 77-9-517 whether such action be authorized by said sections or not; further the railroad shall indemnify the State of Mississippi, the commissioner of public safety and any sheriff for any loss, costs, or expenses incurred by virtue of any act, deed, or omission committed by any such policeman while he is acting or purporting to act under the provisions of Sections 77-9-501 through 77-9-517 whether such act, deed, or omission is authorized by said sections or not.

HISTORY:
Laws, 1976, ch. 441, § 5, eff from and after July 1, 1976.

RESEARCH REFERENCES

ALR.
Liability of one contracting for private police or security service for acts of personnel supplied. 38 A.L.R.3d 1332.

§ 77-9-511. Powers of officers appointed and commissioned in other states.

The governor of this state may enter into agreement with the governor of any other state empowering qualified persons, as defined in Section 77-9-503(b), who are railroad police officers appointed and commissioned in either state, to exercise their powers and authority as defined in Sections 77-9-501 through 77-9-517 in the other state.

HISTORY:
Laws, 1976, ch. 441, § 6, eff from and after July 1, 1976.

Comparable Laws from other States —
Code of Alabama, § 37-2-150.
Maryland Public Safety Code Ann., § 3-414.
New Hampshire Rev. Stat. Ann., § 381:9.

§ 77-9-513. Fee for commission; bond; "hold harmless" provision.

Each railroad policeman commissioned under Sections 77-9-501 through 77-9-517 shall pay to the commissioner of public safety a fee of twenty dollars ($20.00) for the issuance of such commission, and shall file a bond in the sum of fifty thousand dollars ($50,000.00) with the commissioner of public safety, for the lawful and faithful performance of his duties. The cost of the permit and bond shall be borne by the railroad requesting the appointment of such railroad police officer. The filing of such bond shall not relieve any railroad from any civil liability it may otherwise incur in accordance with the provisions of Section 77-9-509. Any railroad requesting and obtaining the appointment and commission of a railroad policeman under the provisions of Sections 77-9-501 through 77-9-517 shall indemnify and hold the State of Mississippi, the commissioner of public safety, and any sheriff executing a written permission as provided herein harmless from any and all liability which any or all of them might otherwise incur for the negligent or unlawful acts of said railroad police officer.

HISTORY:
Laws, 1976, ch. 441, § 7, eff from and after July 1, 1976.

RESEARCH REFERENCES

ALR.
Liability of one contracting for private police or security service for acts of personnel supplied. 38 A.L.R.3d 1332.

§ 77-9-515. Termination of powers and authority of officers.

The powers and authority of any railroad police officer, whether appointed or commissioned pursuant to the provisions of Sections 77-9-501 through 77-9-517 or any former law of this state may be terminated at any time by the commissioner of public safety.

HISTORY:
Laws, 1976, ch. 441, § 8, eff from and after July 1, 1976.

§ 77-9-517. No waiver of sovereign immunity of state.

Nothing contained herein shall be construed to waive the sovereign immunity of the State of Mississippi in whole or in part.

HISTORY:
Laws, 1976, ch. 441, § 9, eff from and after July 1, 1976.

ABANDONMENT OF RAILROAD LINES

Sec.	
77-9-521.	Rail carrier notice of intent to abandon rail line or discontinue service; legislative notification.

Sec.
77-9-523. Legislative committees to consider proposed abandonment.
77-9-525. Public hearing; resolution as to position on proposed abandonment.
77-9-527. Transportation Commission authorized to acquire railroads proposed to be abandoned or discontinued; powers of commission in regard to such railroads.

§ 77-9-521. Rail carrier notice of intent to abandon rail line or discontinue service; legislative notification.

(1) A rail carrier making application to the Surface Transportation Board for certificate of abandonment or discontinuance shall provide to the Governor, in addition to the notice of intent to abandon or discontinue provided for in the Interstate Commerce Act (Subtitle IV to Title 49, United States Code Service, Section 10,101 et seq.), a copy of the application for a certificate of abandonment or discontinuance, an accurate and understandable summary of the rail carrier's application and the reasons for the proposed abandonment or discontinuance, a statement containing the estimate of the subsidy and minimum purchase price required to keep the line in operation.

(2) Upon receipt by the Governor of the notice, application and other information described in subsection (1) of this section, the Governor shall forthwith transmit a copy thereof to the Clerk of the House of Representatives and to the Secretary of the Senate, who shall then immediately notify the respective Chairmen of the Transportation Committee of the House of Representatives and the Highways and Transportation Committee of the Senate of the receipt of such notice. The respective chairmen of such committees shall then notify those members of the Legislature, representing legislative districts within which the proposed railroad line abandonment or discontinuance is planned, of such abandonment or discontinuance.

HISTORY:

Laws, 1980, ch. 360, § 1; Laws, 1987, ch. 314, § 1; Laws, 1998, ch. 318, § 1, eff from and after passage (approved March 12, 1998).

RESEARCH REFERENCES

ALR.

What constitutes abandonment of a railroad right of way. 95 A.L.R.2d 468.

Am. Jur.

65 Am. Jur. 2d, Railroads §§ 188- 191.

21 Am. Jur. Pl & Pr Forms (Rev), Railroads, Forms 41 et seq.

CJS.

74 C.J.S., Railroads §§ 132, 133.

§ 77-9-523. Legislative committees to consider proposed abandonment.

Each member of the Legislature representing a legislative district within which the proposed railroad abandonment or discontinuance is planned shall recommend to his respective House Transportation Committee or Senate Highways and Transportation Committee chairman, after reviewing such information as is available, whether or not a public hearing should be held to investigate and consider the proposed railroad abandonment or discontinuance. The Chairman of the Transportation Committee of the House of Representatives and the Chairman of the Highways and Transportation Committee of the Senate shall then confer with each other and, if the Legislature is not in session at the time, then also with the House Management Committee and the Lieutenant Governor, and then shall call a joint meeting for the sole purpose of investigating and considering the proposed or intended abandonment or discontinuance. Each chairman may, in his discretion, and based upon the recommendations of the legislators representing the districts within which the proposed railroad abandonment or discontinuance is planned, appoint three (3) members from his committee and call a joint meeting for the sole purpose of investigating and considering the proposed or intended abandonment or discontinuance.

HISTORY:

Laws, 1980, ch. 360, § 2; Laws, 1987, ch. 314, § 2; Laws, 1998, ch. 318, § 2, eff from and after passage (approved March 12, 1998).

RESEARCH REFERENCES

ALR.

What constitutes abandonment of a railroad right of way. 95 A.L.R.2d 468.

Am. Jur.

65 Am. Jur. 2d, Railroads §§ 188- 191.

21 Am. Jur. Pl & Pr Forms (Rev), Railroads, Forms 41 et seq.

CJS.

74 C.J.S., Railroads §§ 132, 133.

§ 77-9-525. Public hearing; resolution as to position on proposed abandonment.

A public hearing, in the discretion of the Senate Highway and Transportation Committee and the House Transportation Committee chairmen, may be held by the chairmen and three (3) appointed members of the committees meeting concurrently to receive testimony within twenty (20) days after the receipt of notice to the chairmen of the statement of intent to abandon or discontinue service. The committees may adopt, by a majority vote of those members present and voting, a concurrent resolution memorializing the Surface Transportation Board either to permit or to refuse to permit the person, company or other legal entity owning or operating the railroad to abandon the rail line or discontinue rail service thereon, stating the reasons supporting the position. If a concurrent resolution is adopted by both of the committees, the Clerk of the House of Representatives and the Secretary of the Senate shall forthwith transmit certified copies of such resolution to the Surface Transportation Board, the Mississippi Transportation Commission and to each of the members of Congress elected from the state.

HISTORY:

Laws, 1980 ch. 360, § 3; Laws, 1982, ch. 373; Laws, 1987, ch. 314, § 3; Laws, 1997, ch. 460, § 25, eff from and after July 1, 1997.

RESEARCH REFERENCES

ALR.
What constitutes abandonment of a railroad right of way. 95 A.L.R.2d 468.

Am. Jur.
65 Am. Jur. 2d, Railroads §§ 188- 191.

21 Am. Jur. Pl & Pr Forms (Rev), Railroads, Forms 41 et seq.

CJS.
74 C.J.S., Railroads §§ 132, 133.

§ 77-9-527. Transportation Commission authorized to acquire railroads proposed to be abandoned or discontinued; powers of commission in regard to such railroads.

(1) If a rail carrier files a notice of intent to abandon or discontinue as provided for in the Interstate Commerce Act, the Mississippi Transportation Commission shall have the power to acquire the railroad that is proposed to be abandoned or discontinued. The Mississippi Transportation Commission shall have the power to construct, own, hold, control, use, extend, relocate, operate, maintain, repair, equip and lease such railroad and any machinery, equipment or other facilities required and incidental to the ownership and operation of such railroad.

(2) For the purposes provided for in subsection (1) of this section, the Mississippi Transportation Commission shall have the power to acquire rights-of-way, land, easements, property and interests in property by gift, purchase, condemnation or otherwise. In exercising condemnation under this section, the commission shall condemn property in the manner provided by law.

HISTORY:
Laws, 2003, ch. 521, § 3, eff from and after July 1, 2003.

Federal Aspects—
Interstate Commerce Act, see 49 USCS §§ 10101 et seq.

MISSISSIPPI-ALABAMA RAILROAD AUTHORITY COMPACT

Sec.
77-9-531. Mississippi-Alabama Railroad Authority Compact.

§ 77-9-531. Mississippi-Alabama Railroad Authority Compact.

The Governor, on behalf of this state, is hereby authorized and directed to execute a compact, in substantially the following form, with the State of Alabama; and the Legislature hereby signifies in advance its approval and ratification of such compact, which compact is as follows:

MISSISSIPPI-ALABAMA RAILROAD AUTHORITY COMPACT

The contracting states solemnly agree:

ARTICLE I.

The purpose of this compact is to promote and develop trade, commerce, industry and employment opportunities for the public good and welfare in Mississippi and Alabama through the establishment of a joint interstate authority to acquire certain railroad properties and facilities which the operator thereof has notified the Interstate Commerce Commission of an intention to abandon and which are located in Mississippi or Alabama.

ARTICLE II.

For the purposes of this compact the following terms shall have the following meanings unless the context clearly indicates otherwise:

(a) "Person" means an individual, a corporation, a partnership or any other entity.

(b) "Railroad" means a common carried by railroad as defined in Section 1(3) of Part I of the Interstate Commerce Act (codified as 49 U.S.C.S. Section 1(3)).

(c) "Railroad properties and facilities" means any real or personal property or interest in such property which is owned, leased or otherwise controlled by a railroad or other person, including the authority, and which is used or is useful in rail transportation service, including the foregoing:

(i) Track, roadbed and related structures, including rail, ties, ballast, other track materials, grading, tunnels, bridges, trestles, culverts, elevated structures, station, office buildings used for operating purposes only, repair shops, engine houses and public improvements used or useful in providing rail transportation service;

(ii) Communication and power transmission systems for use by railroads;

(iii) Signals and interlockers;

(iv) Terminal or yard facilities and services to express companies, railroads and their shippers, including ferries, tugs, car floats and related shoreside facilities designed for the transportation of equipment by water; and

(v) Shop or repair facilities or any other property used or capable of being used in providing rail transportation service or in connection with such service or for originating, terminating, improving and expediting the movement of equipment or goods.

(d) "Rail transportation service" means freight and/or passenger rail service.

ARTICLE III.

The states which are parties to this compact (hereinafter referred to as the "party states") do hereby establish and create a joint interstate authority which shall be known as the "Mississippi-Alabama Railroad Authority" (hereinafter referred to as the "authority"). The authority shall be governed and all powers thereof exercised by a board of directors (hereinafter referred as the "board"). The membership of the board shall consist of the Mayor of the Town of Belmont, Mississippi; two (2) other citizens of the State of Mississippi to be appointed by the governing authorities of the Town of Belmont, Mississippi; the Mayor of the City of Red Bay, Alabama, and two (2) other citizens of the State of Alabama to be appointed by the governing authorities of the City of Red Bay, Alabama. Each of the appointive members of the board shall be a qualified elector in a state named in Article I and shall serve for a term of four (4) years. Directors shall be eligible for reelection. If any director should die, resign or become incapable or ineligible to act as a director, a successor thereto for the remaining portion of the unexpired term shall be appointed by the governing body which appointed the director whose unexpired term is to be filled. The board shall hold such regular and special meetings as its business may require and as the board may determine. Any meeting of the board may be adjourned from time to time by a majority of the members present. A majority of the members of the board shall constitute a quorum for the transaction of any business. No vacancy in the membership of the board shall impair the right of a quorum to exercise all powers and duties of the authority. Members of the board shall receive no compensation for their services as directors; however, each member may be reimbursed for expenses actually incurred in the performance of his duties as provided by law. The authority shall adopt rules and regulations for the transaction of its business and the secretary shall keep a record of all its business and furnish copies thereof to each member of the board. The meetings and records of the board and of the authority shall be open to the public. The board shall establish the location of the principal office of the authority, which shall be in one (1) of the states named in Article I. The officers of the authority shall consist of a chairman, a vice chairman, a secretary, a treasurer and such other officers as the board shall deem necessary. The chairman and vice chairman shall be elected by the board from its membership and the chairmanship shall rotate each year among the party states in order of their acceptance of this compact. Neither the secretary nor the treasurer nor any other officer of the authority need be a member of the board. Each officer shall be elected by the board for a term of one (1) year. Officers shall be eligible for reelection. The duties of the officers of the authority shall be such as are customarily performed by such officers and as may be prescribed by the board.

ARTICLE IV.

(1) Subject to the provisions hereof, the authority shall have and may exercise all powers as may be necessary or appropriate to enable it to carry out the purposes of this compact, including the following powers:

(a) To have succession by its corporate name;

(b) To sue and be sued in its own name in civil suit and actions;

(c) To adopt and make use of a corporate seal and to alter the same at pleasure;

(d) To adopt and alter bylaws for the regulation and conduct of its affairs and business;

(e) To acquire, receive, take and hold, whether by purchase, gift, lease, devise, or otherwise, property of every description, whether real, personal or mixed, wherever located in any party state, and to manage such property, and to develop any undeveloped property owned, leased or controlled by it in a manner necessary or convenient to carry out the purposes of this compact;

(f) To make, enter into, execute and deliver such contracts, agreements, leases, applications, permits, notifications, security documents and other instruments and documents as may be necessary, proper, convenient or incidental to accomplish any purpose for which the authority was created or to carry out the purposes of this compact or to exercise any power granted hereunder, including contracts, agreements and other documents and instruments containing such covenants, terms and conditions as in the judgment of the board may be necessary, proper or advisable for the purpose of obtaining grants, loans or other financial assistance from any federal or state government or any department, branch or agency thereof for or in the aid of the acquisition or improvement of railroad properties and facilities and any and all licenses, leases, mortgages and deeds of trust and other agreements relating to the railroad properties and facilities and the construction, operation, maintenance, repair and improvement thereof, and to carry out and perform the covenants, terms and conditions of all such contracts, agreements and other documents or instruments;

(g) To plan, establish, acquire (by purchase, gift, lease or devise), construct, enlarge, reconstruct, improve, operate, maintain, replace, repair, extend, improve, regulate and protect railroad properties and facilities (whether or not then existing) wherever located or to be located within the boundaries of either or both of the party states;

(h) To make the use and services of its railroad properties and facilities available to others in furtherance of the purposes of this compact and upon such terms and conditions as the board shall deem proper, and to lease such railroad properties and facilities to others upon such terms and conditions as the board may determine;

(i) To establish schedules of tolls, fees, rates, charges and rentals for the use of its railroad properties and facilities and to charge, alter and collect such tolls, fees, rates, charges and rentals in carrying out the provisions of this compact;

(j) To issue revenue bonds and notes at any time and from time to time, for any corporate purpose or purposes or in aid of any power under this compact, payable from the limited sources hereinafter referenced and to pledge for payment of such bonds and notes any revenues and funds from which such bonds and notes are made payable;

(k) To exercise, with respect to property located in Mississippi in the manner provided by the laws of Mississippi and with respect to property located in Alabama in the manner provided by the laws of Alabama, the power of eminent domain with respect to any property, real, personal or mixed; provided, the authority may not acquire by eminent domain any real property or rights owned or held by railroads, transportation companies or utilities, either public or private;

(*l*) To appoint, employ, contract with and provide for compensation of such officers, employees and agents, including engineers, attorneys, consultants, fiscal advisers and such other employees as the business of the authority may require, including the power to fix working conditions by general rule and other conditions of employment, and at its option to provide a system of disability pay, retirement compensation and pensions, or any of them, and to hire and fire servants, agents, employees and officers at will;

(m) To provide for such insurance, including use and occupancy insurance, as the authority may deem advisable;

(n) To invest any funds of the authority that the board may determine are not presently needed for its corporate purposes in any obligations which are direct general obligations of the United States of America or which are unconditionally guaranteed as to both principal and interest by the United States of America, or in interest-bearing time deposits of any bank or savings and loan association organized under the laws of any party state or of the United States of America;

(o) To cooperate with any party state and any county, city, town, public corporation, agency, department or political subdivision of any party state and to make such contracts with them or any of them as the board may deem advisable to accomplish the purposes for which the authority was established;

(p) To sell and convey any of its properties that may have become obsolete or worn out or that may no longer be needed or useful;

(q) To accept, receive, receipt for, disburse and expend moneys or other financial assistance from the United States of America or any department or agency thereof, and from any party state or any department, agency or political subdivision thereof, and to receive and accept money, property, labor or other thing of value, from any source whatever, public or private, to be used for or in aid of the acquisition, construction, extension, improvement, maintenance and operation of railroad properties and facilities or to be used in furtherance or to accomplish (in whole or in part) any of the purposes of this compact. All federal moneys shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the United States of America and as are not inconsistent with the laws of any party state, and all state moneys shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the laws of the state making the same available;

(r) To purchase equipment and supplies necessary or convenient for the exercise of any power of the authority; and

(s) To take such action and do all things as may be necessary or convenient to carry out the purposes of this compact or the exercise of any power hereunder.

(2) Nothing contained in this compact shall operate or be construed to (a) permit or require any person to avoid or refuse compliance with any law, rule, regulation, order or other controlling directive or administrative guidance, now or hereafter existing or in force, of any federal or state government, department, branch, agency or other instrumentality or (b) impair, limit, diminish or otherwise affect any right, power or jurisdiction of the United States of America or any department, branch, agency, court, bureau or other instrumentality thereof with respect to any matter including commerce between the states, or (c) grant or confer any right or power to the authority or any officer, member of the board, or other representative thereof to regulate commerce between the states. The authority shall be subject to and shall comply with all applicable laws, regulations, rules, rulings, orders, decrees, judgments, decisions or other guidelines of the United States of America or any branch, agency, department, court or other instrumentality having jurisdiction over the authority or any of its activities or properties or of any person acting for the authority and all rights and powers provided by this compact may be exercised only to the extent the exercise thereof does not violate any of the foregoing. The provisions of this compact are subject to all provisions of federal law and other controlling federal directives applicable in the premises and to be limited to the extent necessary to comply therewith.

ARTICLE V.

For the purpose of aiding and cooperating with the authority in the planning, development, undertaking, construction, extension, improvement or operation of railroad properties and facilities, any county, city, town or other political subdivision, public corporation, agency or instrumentality of a party state may, upon such terms and with or without consideration, as it may determine:

(a) Lend or donate money to the authority;

(b) Cause water, sewer or drainage facilities, or any other facilities which it is empowered to provide, to be furnished adjacent to or in connection with such railroad properties and facilities;

(c) Donate, sell, convey, transfer or lease to the authority any land, property, franchise, grant, easement, license or lease, which it may own;

(d) Donate, transfer, assign, sell or convey to the authority any right, title or interest which it may have in any lease, contract, agreement, license or property;

(e) Furnish, dedicate, close, pave, repair, install, grade, regrade, plan or replan streets, roads, roadways and walks from established streets or roads to railroad properties and facilities of the authority; and

(f) Do any and all things whether or not specifically authorized in this compact and not otherwise prohibited by law in the applicable party state that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, reconstruction, acquisition or operation of railroad properties and facilities.

ARTICLE VI.

No action or suit shall be brought or maintained against any administrator, executive, manager, officer or member of the board or the authority for or on account of the negligence of the authority or of any such person or its or his agents, servants or employees, in or about the construction, maintenance, operation, superintendence or management of any railroad properties and facilities or other property owned or controlled by the authority.

ARTICLE VII.

(1) All bonds issued by the authority shall be payable solely from, and may be secured by a pledge of, the revenues derived by the authority from the operation, leasing or sale of any or all of its railroad properties and facilities and other property, and/or from any other funds made available or to be made available to the authority if so permitted by the terms under which such funds are so made available to the authority. No bonds or notes issued or contracts entered into by the authority shall ever constitute or create an obligation or debt of any party state, or of any county, city or town within any party state or a charge against the credit or taxing powers of any party state or of any county, city or town within any party state.

(2) Bonds of the authority may be issued at any time and from time to time, may be in such form, either in bearer form with appurtenant coupons (and subject to registration as to principal or interest, or both, all as the board may determine) or in fully registered form without coupons, and in such denominations, may be of such tenor, may be payable in such installments and at such time or times not exceeding forty (40) years from their date, may be payable at such place or places whether within or without any party state, may bear interest at such rate or rates (which may be fixed or which may float or vary based on some index or other standard deemed appropriate by the board), and shall be payable and evidenced in such manner, all as shall not be inconsistent with the provisions of this compact and as may be provided in the proceedings of the board wherein the bonds shall be authorized to be issued. Any bond may be made subject to redemption at the option of the authority at such time or times and at such price or prices and upon such notice or notices and on such terms and in such manner as may be provided in the proceedings of the board wherein the bonds shall be authorized to be issued. Bonds of the authority may be sold at public or private sale in such manner and from time to time as may be determined by the board. The authority may pay all reasonable expenses, premiums, fees and commissions that the board may deem necessary or advantageous in connection with the authorization, sale and issuance of its bonds. All bonds shall contain a recital that they are issued pursuant to the

provisions of this compact, which recital shall be conclusive that they have been duly authorized pursuant to the provisions of this compact. Neither a public hearing nor the consent of any agency of any party state or any political subdivision thereof shall be prerequisite to the issuance of bonds by the authority. All bonds issued under the provisions of this compact are hereby made and shall be deemed negotiable instruments.

(3) All bonds shall be signed (either manually or by facsimile) by the chairman or the vice chairman and the secretary or the treasurer of the authority and the seal of the authority shall be affixed (either manually or by facsimile) thereto. Delivery of bonds so executed shall be valid notwithstanding any changes in said officers or in the seal of the authority after the signing and sealing of the bonds.

(4) Any bonds may be issued under and secured by an indenture between the authority and a trustee. Such trustee may be a private person or corporation, including any trust company or bank having trust powers, whether such bank or trust company is located within or without any party state. In such indenture or resolution providing for the issuance of bonds, the authority may pledge, for payment of the principal of and the interest on such bonds, any of its revenues to which its right then exists or may thereafter come into existence and may assign, as security for such payment, any of its leases, franchises, permits and contracts; and in any such indenture, the authority may mortgage or grant security interests in any of its properties, including any that may be thereafter acquired by it. Any such pledge of revenues shall be valid and binding from the time it is made and the revenues so pledged and thereafter received by the authority shall immediately become subject to the lien of such pledge without any physical delivery thereof or further act. The lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether the parties have actual notice thereof, from the time a statement is filed for record in each county in which is located any part of the property the revenues from which are so pledged. Such notice need state only the date on which the resolution authorizing the issuance of the bonds was adopted by the board, the principal amount of bonds issued, a brief description of the revenues so pledged and a brief description of any property the revenues from which are so pledged.

(5) In any indenture or resolution authorizing the issuance of bonds and pledging for the benefit thereof revenues from any of its railroad properties and facilities, the authority shall have the power to include provisions customarily contained in instruments securing evidence of indebtedness, including provisions respecting the collection, segregation and application of any rental or other revenue due to or to become due to the authority, the terms to be incorporated in any lease agreement respecting any property of the authority, the maintenance and insurance of any building or structure owned by the authority, the creation and maintenance of special funds from any revenue of the authority and the rights and remedies available in the

event of default to the holders of the bonds or the trustee under the indenture, all as the board shall deem advisable. If there be any default by the authority in payment of the principal of or the interest on the bonds or in any of the agreements on the part of the authority that may properly be included in any indenture securing the bonds, any holder of bonds, or the trustee under any indenture if so authorized in such indenture, in addition to any other remedies herein provided or otherwise available, may either at law or in equity, by suit, action, mandamus or other proceedings, enforce payment of such principal or interest and compel performance of all duties of the board and officers of the authority, and shall be entitled as a matter of right, and regardless of the sufficiency of any such security, to the appointment of a receiver in equity with all the powers of such receiver for the operation and maintenance of the property of the authority covered by such indenture and the collection, segregation and application of revenues therefrom. The indenture may also contain provisions restricting the individual rights of action of the holders of the bonds.

(6) The proceeds derived from the sale of any bonds other than refunding bonds may be used only to pay the costs of acquiring, constructing, improving, enlarging, equipping and operating the railroad properties and facilities, or other property with respect to which such bonds were issued, as may be specified in the proceedings in which the bonds are authorized to be issued. Such costs shall be deemed to include the following: the costs of any land or easements forming a part of such railroad properties and facilities or other property; the cost of labor, material and supplies used in any such construction, improvement or enlargement, including architects' and engineers' fees, and the cost of preparing contract documents and advertising for bids; the purchase price of and the cost of installing equipment for use in connection with such railroad properties and facilities or other property; the cost of constructing and installing roads, sidewalks, curbs, gutters, utilities and parking places in connection with such railroad properties and facilities or other property; the amounts of any debt service, maintenance and capital improvement and other similar reserves deemed advisable; legal, fiscal, credit enhancement or insurance, and recording fees, premiums and expenses incurred in connection with the authorization, sale and issuance of the bonds issued in connection with such railroad properties and facilities or other property; and interest on said bonds for a reasonable period prior to and during the time required for such construction, improvement, enlargement and equipment and not to exceed eighteen (18) months after completion thereof. If any of the proceeds derived from the sale of said bonds remains undisbursed after completion of such work and payment of all of the said costs and expenses, such balance shall be used for retirement of the principal of the bonds of the same issue.

(7) The authority may at any time and from time to time issue refunding bonds for the purpose of refunding the principal of and the interest on any bonds of the authority theretofore issued hereunder and then outstanding, whether or not such principal and interest shall have matured

at the time of such refunding, and for the payment of any expenses incurred in connection with such refunding and any premium necessary to be paid in order to redeem, retire or purchase for retirement the bonds to be refunded. The proceeds derived from the sale of any refunding bonds shall be used only for the purposes for which the refunding bonds were authorized to be issued. Any such refunding may be effected either by sale of the refunding bonds and the application of the proceeds thereof, or by exchange of the refunding bonds for the bonds to be refunded thereby. All provisions of this compact pertaining to bonds of the authority that are not inconsistent with the provisions of this subsection shall, to the extent applicable, also apply to refunding bonds issued by the authority. The authority may at any time and from time to time issue bonds for the purpose of so refunding the principal of and the interest on any of its bonds and for any other purpose for which it is authorized to issue bonds, in which event the provisions hereof respecting refunding bonds shall apply only to that portion of such combined issue authorized for refunding purposes and the provisions hereof respecting other financing shall apply to the remaining portion of such combined issue.

(8) The authority may, in addition to the other powers granted herein, borrow money for use for any corporate purpose described herein and, in evidence of such borrowing, issue from time to time revenue notes maturing not later than eighteen (18) months from the date of issuance and bearing such rate or rates of interest as the board may provide in the proceedings when the same are authorized to be issued. Such notes may be payable from the principal proceeds from the sale of bonds and/or, to the extent necessary, from any revenues of the authority which may be pledged to the payment of its bonds and such notes may be secured by a pledge of so much as may be necessary therefor of such revenues. Any such notes may be refunded or renewed or extended for additional periods of not more than eighteen (18) months each from the date of maturity of such notes being refunded or renewed or extended, but otherwise pursuant to the terms and conditions hereof. Any such notes may be sold either at public or private sale as the board may determine. All provisions of this compact pertaining to bonds of the authority that are not inconsistent with the provisions of this subsection shall, to the extent applicable, also apply to notes issued by the authority.

(9) The governing body of any county, city or town within any party state is authorized in its discretion to invest in bonds of the authority any money held in its treasury. Bonds issued under the provisions of this compact are hereby made legal investments for executors, administrators, trustees and other fiduciaries, unless otherwise directed by the court having jurisdiction of the fiduciary relation or by the document that is the source of the fiduciary's authority. Such bonds shall be legal investments for savings banks and insurance companies organized under the laws of any party state.

(10) The directors and officers of the authority shall not be subject to any personal liability by reason of the issuance of any bonds or notes of the authority.

ARTICLE VIII.

The authority and all contracts made by it shall be exempt from (a) all laws (i) relating to the advertising and award of construction contracts and purchase contracts and (ii) limiting the duration of or requiring competitive bids in connection with any contract to be entered into by any municipality, county, public corporation or other instrumentality, and (b) from all laws relating to or governing usury or prescribing or limiting interest rates. The authority and its contracts and properties shall be exempt from all jurisdiction of and all regulation and supervision by the Public Service Commission or other successor or similar agency of any party state. All bonds or notes issued by the authority, the transfer thereof and the income therefrom shall be exempt from all taxation by each party state and any political subdivision thereof. The authority and all property and income of the authority shall be exempt from all state, county, municipal and other local taxation and from any assessment for public improvements; provided, however, that this exemption shall not be construed to exempt concessionaires, licensees, tenants, operators or lessees of the authority from the payment of any taxes, including licenses or privilege taxes levied by any party state or any county or any municipality in any party state. All documents or instruments of whatever nature or content to which the authority is a party shall be filed for record in any county in any party state without the payment of any tax or fee other than such fee as may be authorized by law for the recording of such documents and instruments. The authority shall be exempt from all income, privilege, license or excise taxes levied by any party state or any county, city, town or other political subdivision thereof in respect to the income, revenue or profits of the authority or the privilege of engaging in any of the activities or powers in which the authority may engage or which the authority may exercise. The authority shall be exempt from all privilege, license or excise taxes levied by any party state or any county, city, town or other political subdivision thereof with respect to tangible personal property purchased or used by the authority.

ARTICLE IX.

Nothing in this compact shall be construed so as to conflict with any existing statute, or to limit the powers of any party state, or to repeal or prevent legislation, or to authorize or permit curtailment or diminution of any other railroad project, or to affect any existing or future cooperative arrangement or relationship between any federal agency and a party state.

ARTICLE X.

This compact shall continue in full force and remain binding upon each party state. At any time when the authority does not have any bonds, notes or other obligations outstanding, including any leases under which the authority is either lessor or lessee, the Legislature of each or either party state may take action to withdraw from this compact; provided, that such withdrawal shall not become effective until six (6) months after the date of the action taken by the Legislature. Notice of such action shall be given to the other party state and the authority by the Secretary of State of the party state which takes such action. Upon withdrawal of a party state from this compact becoming effective as to such party state, the authority shall cease to exist and all rights, title and interest of the authority in property located in the State of Mississippi shall be vested in the Town of Belmont, Mississippi, and all rights, title and interest of the authority in property located in the State of Alabama shall be vested in the City of Red Bay, Alabama.

ARTICLE XI.

The authority shall be a nonprofit corporation and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any person, except that in the event the board shall determine that sufficient provision has been made for the full payment of the expenses, bonds, notes and other obligations of authority, then any net earnings of the authority thereafter accruing shall be equally divided between the Town of Belmont, Mississippi, and the City of Red Bay, Alabama. The authority shall not be appropriated any monies nor shall the authority expend any monies from the State General Fund of Mississippi.

ARTICLE XII.

There is hereby granted to the Governor, to the members of the board of the authority for Mississippi and to any executives or administrators of this compact all the powers provided for in such compact. All officers of the State of Mississippi are hereby authorized and directed to do all things falling within their respective jurisdictions which are necessary or incidental to carrying out the purposes of such compact.

ARTICLE XIII.

The provisions of this compact are severable. If any part of this compact is declared invalid or unconstitutional, such declaration shall not affect the remaining parts thereof.

HISTORY:

Laws, 1992, ch. 392, § 1, eff from and after passage (approved April 27, 1992).

Comparable Laws from other States —

Alabama Code, § 37-11A-1.

Georgia Code Annotated, § 46-9-300.

Louisiana Revised Statutes Annotated, §§ 48:1671, 48:1672.

ARTICLE 5.

EXPRESS COMPANIES.

Sec.
77-9-601. Only chartered express companies to do business of common carriers.

Sec.
77-9-603. Penalty for violation.
77-9-605. Offices of express companies.
77-9-607. Civil liability of express companies.

§ 77-9-601. Only chartered express companies to do business of common carriers.

It shall be unlawful for any person or persons, whether residents or non-residents of this state, or any partnership, association or society of persons, resident or non-resident in this state, except express companies duly chartered as such by the laws of this state or some other state of the United States, to engage in the business of a common carrier by express over or upon any railroad or railroads or steamboat within this state. However, nothing herein contained shall apply to the carrying by express goods shipped from points without this state to points within this state, or from points within this state to points without this state, or through or across this state.

HISTORY:
Codes, 1906, § 4898; Hemingway's 1917, § 7682; 1930, § 7050; 1942, § 7826.

Cross References —
Power of railroad corporation to do express business, see § 77-9-167.

RESEARCH REFERENCES

Am. Jur.
13 Am. Jur. 2d, Carriers §§ 14, 16.

CJS.
13 C.J.S., Carriers § 15.

§ 77-9-603. Penalty for violation.

If any person, partnership, association or society of persons or any agent or representative of such person, partnership, association or society shall, in violation of Section 77-9-601, engage in such business within this state, or shall receive for transportation by express or transport or carry or assist in such transportation or delivery, such person or persons shall be guilty of a misdemeanor, and, on conviction, shall, for each offense, be fined in any amount not exceeding one thousand dollars, or be imprisoned not exceeding three months, or both.

HISTORY:
Codes, 1906, § 4899; Hemingway's 1917, § 7683; 1930, § 7051; 1942, § 7827.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 77-9-605. Offices of express companies.

Every express company shall establish and maintain offices for the transaction of business with the public in its capacity as a common carrier, at each city, town, and village convenient to its routes, if, in the opinion of the commission, the public convenience and necessity requires it. An office once established shall not be discontinued without the consent of the commission, which has authority to require such a company to establish and maintain offices.

HISTORY:
Codes, 1892, § 4328; 1906, § 4882; Hemingway's 1917, § 7669; 1930, § 7057; 1942, § 7833; Laws, 1908, ch. 80; Laws, 2018, ch. 332, § 17, eff from and after passage (approved March 8, 2018).

Amendment Notes —
The 2018 amendment, effective March 8, 2018, deleted "public service" preceding "commission" in the first sentence.

§ 77-9-607. Civil liability of express companies.

If any express company, through any agent or employee, shall demand and receive of a consignee any charge or part of a charge which had been prepaid, or a greater sum than the company had agreed to perform the services for, or more than reasonable compensation for any service rendered, the consignee or person paying the overcharge shall be entitled to recover of the company twenty-five dollars, in addition to damages for any injury.

Any package, which the company shall receive and transport marked "paid" or "pd.," or otherwise so marked as to indicate prepayment, shall not be charged for at the point of delivery, under the same penalty.

HISTORY:
Codes, 1892, § 4327; 1906, § 4881; Hemingway's 1917, § 7668; 1930, § 7094; 1942, § 7870; Laws, 1908, chs. 77, 79.

ARTICLE 7.

TELEGRAPH AND TELEPHONE COMPANIES.

Sec.	
77-9-701.	Offices of telegraph companies.
77-9-703.	Duty of telegraph and telephone companies to transmit messages; penalty for failure, neglect or refusal.
77-9-705.	Duty of telegraph and telephone companies to deliver messages; penalty for failure, neglect or refusal.
77-9-707.	Evidence of transmission of telegram in suits against telegraph companies.
77-9-709.	Duty of telegraph and telephone companies to transmit public messages.
77-9-711.	Erection of telegraph and telephone lines.
77-9-713.	Local authorities may regulate construction and maintenance of lines.
77-9-715.	Liability for damages caused by erection, continuance and use of lines.
77-9-717.	Exercise of eminent domain for construction of new lines.
77-9-719.	Consolidation and merger of telephone lines, exchanges and property authorized.
77-9-721.	Local authorities, public service commission, and attorney-general must consent to consolidation and merger.
77-9-723.	Nothing in preceding sections shall mandate consolidation and merger.
77-9-725.	Blacklisting of telegraphers because of union affiliation is unlawful.
77-9-727.	Conspiracy to blacklist telegrapher is unlawful.
77-9-729.	Telegrapher discriminated against may recover actual and exemplary damages.

§ 77-9-701. Offices of telegraph companies.

Every telegraph company shall establish and maintain offices for the transaction of business with the public in its capacity as a common carrier, at each city, town, and village convenient to its routes, if, in the opinion of the public service commission, the public convenience and necessity requires it. An office once established shall not be discontinued without the consent of the commission, which has authority to require such a company to establish and maintain offices. The commission has authority to require telegraph companies to keep night operators at every place where, in its judgment, the business and the public convenience justify and require it.

HISTORY:
Codes, 1892, § 4328; 1906, § 4882; Hemingway's 1917, § 7669; 1930, § 7057; 1942, § 7833; Laws, 1908, ch. 80.

Cross References —
Power of railroad corporation to do telegraph business, see § 77-9-167.

JUDICIAL DECISIONS

1. In general.
A telegraph company engaged in domestic as well as interstate business is subject to such reasonable police regulations as the state may impose. Western Union Tel. Co. v. Mississippi R. Com., 74 Miss. 80, 21 So. 15, 1896 Miss. LEXIS 145 (Miss. 1896).

It is immaterial that the company was chartered by another state and secured its right to erect its line along post roads in this state under an act of congress. Western Union Tel. Co. v. Mississippi R. Com., 74 Miss. 80, 21 So. 15, 1896 Miss. LEXIS 145 (Miss. 1896).

§ 77-9-703. Duty of telegraph and telephone companies to transmit messages; penalty for failure, neglect or refusal.

A telegraph or telephone company shall transmit all written messages between points where it may have offices within the state. If the telegraph or telephone company shall receive any message or matter at one of its offices in this state for transmission to a person addressed at a point where it has an office in the state, and shall fail, neglect or refuse without good and sufficient reason to transmit the same in a reasonable time to the office at the place of the person addressed, such person or the person injured shall be entitled to recover of the company in default the sum of fifteen dollars, in addition to damages for any injury. This section shall not apply to offices of telephone and telegraph companies in towns of less than one thousand inhabitants where the telephone or telegraph companies do not employ and control the operator.

HISTORY:
Codes, 1906, § 4880; Hemingway's 1917, § 7666; 1930, ch. 7058; 1942, § 7834; Laws, 1908, ch. 78.

Cross References —
Criminal offense of divulging contents of telegram, see § 97-25-49.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Limitation of liability.
3. Punitive damages.

1. In general.
Rights and liabilities as to interstate telegram held covered by federal law. Western Union Tel. Co. v. Norman, 121 Miss. 128, 83 So. 465, 1919 Miss. LEXIS 154 (Miss. 1920).

Where message was telephoned over line of telephone company with which telegraph company had no contract, company was not liable for failure to produce telegram on demand of sendee. Western Union Tel. Co. v. Meek, 115 Miss. 82, 75 So. 772, 1917 Miss. LEXIS 188 (Miss. 1917).

A telegraph company is bound to transmit a message although written on paper other than its usual blanks, if it is received by its operator and paid for by the sender as a message to be sent. Western Union Tel. Co. v. Jones, 69 Miss. 658, 13 So. 471, 1892 Miss. LEXIS 29 (Miss. 1892).

2. Limitation of liability.

Limitation of liability for mistake in unrepeated interstate message held binding on sendee. Western Union Tel. Co. v. Bourn, 122 Miss. 67, 84 So. 143, 1920 Miss. LEXIS 419 (Miss. 1920).

3. Punitive damages.

Under federal rule punitive damages are not recoverable for agent's wilful refusal to accept message, unless wrong was authorized or ratified. Postal Telegraph-Cable Co. v. Eubanks, 121 Miss. 530, 83 So. 678, 1920 Miss. LEXIS 98 (Miss. 1920).

Telegraph company not liable for punitive damages for unauthorized act of agent. Western Union Tel. Co. v. Norman, 121 Miss. 128, 83 So. 465, 1919 Miss. LEXIS 154 (Miss. 1920).

Mississippi and Alabama laws authorize recovery of punitive damages for wanton neglect of telegraph company in transmitting message, but under federal law no such damages can be recovered unless company shown to have participated in wrong of servants, or ratified same. Dickerson v. Western Union Tel. Co., 114 Miss. 115, 74 So. 779, 1917 Miss. LEXIS 10 (Miss. 1917), overruled, Western Union Tel. Co. v. Norman, 121 Miss. 128, 83 So. 465, 1919 Miss. LEXIS 154 (Miss. 1920).

RESEARCH REFERENCES

ALR.

Right or duty to refuse telephone, telegraph, or other wire service in aid of illegal gambling operations. 30 A.L.R.3d 1143.

Liability of telegraph or telephone company for transmitting or permitting transmission of libelous or slanderous messages. 91 A.L.R.3d 1015.

Am. Jur.

74 Am. Jur. 2d, Telecommunications §§ 43 et seq., 54 et seq.

17 Am. Jur. Legal Forms 2d, Telecommunications §§ 245:273, 245:274.

23 Am. Jur. Pl & Pr Forms (Rev), Telecommunications, Forms 121 et seq.

CJS.

86 C.J.S., Telecommunications §§ 119, 129 et seq.

§ 77-9-705. Duty of telegraph and telephone companies to deliver messages; penalty for failure, neglect or refusal.

A telegraph or telephone company shall deliver all messages addressed to a person residing or having a place of business in any city, town, or village where it may have an office, or within one mile of its office. If any telegraph or telephone company shall receive any message or matter for transmission, and shall fail, neglect, or refuse, without good and sufficient reason, to transmit correctly or deliver the same within a reasonable time to the person addressed, such person, or the person injured, shall be entitled to recover of the company in default the sum of twenty-five dollars, in addition to damages for any injury.

HISTORY:

Codes, 1892, § 4326; 1906, § 4879a; Hemingway's 1917, § 7665; 1930, § 7059; 1942, § 7835; Laws, 1908, ch. 76.

Cross References —

Criminal offense of divulging contents of telegram, see § 97-25-49.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability to interstate messages.
3. Persons entitled to right of action.
4. Liability.
5. —Limitation of liability.
6. Time limit on presentation of claim.

7. Evidence.
8. Penalty.
9. Damages, generally.
10. —Punitive damages.

1. In general.

Rule that company's messenger taking telegram to office is agent of sender held reasonable. Collotta v. Western Union Tel. Co., 121 Miss. 47, 83 So. 401, 1919 Miss. LEXIS 146 (Miss. 1919).

The section [Code 1942, § 7835] refers only to incorrect transmissions or unreasonable delays in delivery, and authorizes no recovery for delay or failure to transmit. Hilley v. Western Union Tel. Co., 85 Miss. 67, 37 So. 556, 1904 Miss. LEXIS 135 (Miss. 1904).

In a suit against a telegraph company under this section [Code 1942, § 7835] it must be strictly construed and confined to messages which are in writing. Cumberland Tel. & Tel. Co. v. Sanders, 83 Miss. 357, 35 So. 653, 1903 Miss. LEXIS 52 (Miss. 1904).

This section [Code 1942, § 7835] is to be strictly construed and does not give the penalty for delay in the transmission of a message which is promptly delivered after reception. Western Union Tel. Co. v. Hall, 79 Miss. 623, 31 So. 202, 1901 Miss. LEXIS 97 (Miss. 1901).

This section [Code 1942, § 7835] does not apply to delay in transmitting. Marshall v. Western Union Tel. Co., 79 Miss. 154, 27 So. 614, 1901 Miss. LEXIS 1 (Miss. 1901).

This section [Code 1942, § 7835] does not cover a case where the message is transmitted with substantial accuracy, accomplishing its object. Western Union Tel. Co. v. Clarke, 71 Miss. 157, 14 So. 452, 1893 Miss. LEXIS 175 (Miss. 1893).

The message must be received by the company and in accordance with its usual mode of doing business. Western Union Tel. Co. v. Liddell, 68 Miss. 1, 8 So. 510, 1890 Miss. LEXIS 40 (Miss. 1891); Western Union Tel. Co. v. Dozier, 67 Miss. 288, 7 So. 325, 1889 Miss. LEXIS 71 (Miss. 1889).

2. Applicability to interstate messages.

Under the federal rule, neither the state statutory penalty or damages for mental anguish alone can be recovered; and punitive damages are not recoverable against a master for the wilful or grossly negligent act of an agent or servant, unless he participated in the wrongful act, expressly or impliedly, or by his conduct authorized or ratified it before or after it was committed. Western Union Tel. Co. v. Wallace, 164 Miss. 759, 146 So. 142, 1933 Miss. LEXIS 264 (Miss. 1933).

Stipulations limiting liability as to interstate messages held valid and binding. Western Union Tel. Co. v. Allsworth, 124 Miss. 214, 124 Miss. 221, 86 So. 762, 1920 Miss. LEXIS 502 (Miss. 1921); Western Union Tel. Co. v. Thompson, 123 Miss. 441, 86 So. 273, 1920 Miss. LEXIS 40 (Miss. 1920); Western Union Tel. Co. v. Bourn, 122 Miss. 67, 84 So. 143, 1920 Miss. LEXIS 419 (Miss. 1920).

Interstate telegram is governed as to punitive damages by federal law. Postal Telegraph-Cable Co. v. Eubanks, 121 Miss. 530, 83 So. 678, 1920 Miss. LEXIS 98 (Miss. 1920).

Rights and liabilities as to interstate telegram are covered by federal law. Western Union Tel. Co. v. Norman, 121 Miss. 128, 83 So. 465, 1919 Miss. LEXIS 154 (Miss. 1920).

Act of Congress regulating interstate telegraph business held to supersede state laws. Western Union Tel. Co. v. Showers, 112 Miss. 411, 73 So. 276, 1916 Miss. LEXIS 124 (Miss. 1916), overruled, Dickerson v. Western Union Tel. Co., 114 Miss. 115, 74 So. 779, 1917 Miss. LEXIS 10 (Miss. 1917).

The rule that the validity of a contract made in one state for the transmission and delivery of a dispatch in another is to be determined by the statutes of the state where made has no application when the common law governs the subject in the state where the contract was made. Postal Tel. & Cable Co. v. Wells, 82 Miss. 733, 35 So. 190, 1903 Miss. LEXIS 193 (Miss. 1903).

A state statute undertaking to impose a penalty on telegraph companies for delay in transmission of a telegram from one state to another interferes with interstate commerce. Marshall v. Western Union Tel. Co., 79 Miss. 154, 27 So. 614, 1901 Miss. LEXIS 1 (Miss. 1901).

The statutory penalty is not recoverable where the message is to be delivered beyond the limits of the state. Alexander v. Western Union Tel. Co., 66 Miss. 161, 5 So. 397, 1888 Miss. LEXIS 82 (Miss. 1888).

3. Persons entitled to right of action.

Telegraph company held liable for punitive damages for failure to send death message promptly by rival line, on learning that connecting phone line had been removed, where it had charged extra for telephoning. Western Union Tel. Co. v. Teague, 117 Miss. 401, 77 So. 302, 78 So. 610, 1918 Miss. LEXIS 146 (Miss. 1918).

Where message was sent by telephone over line of company with whom telegraph company had no contract, telegraph company was not liable for failure of its office to produce telegram on demand of sendee. Western Union Tel. Co. v. Meek, 115 Miss. 82, 75 So. 772, 1917 Miss. LEXIS 188 (Miss. 1917).

If a telegraph company receive in another state a message for transmission and delivery to the sendee in this state, and negligently deliver him a different message it will be liable to him in tort. Postal Tel. & Cable Co. v. Wells, 82 Miss. 733, 35 So. 190, 1903 Miss. LEXIS 193 (Miss. 1903).

Where telegraph company's operator accepted message and payment therefor, the fact that there was no office at the place to which the message was to be sent did not relieve the company from liability for failure to transmit and deliver the message. Western Union Tel. Co. v. Jones, 69 Miss. 658, 13 So. 471, 1892 Miss. LEXIS 29 (Miss. 1892).

4. Liability.

Addressee of telegram could not recover penalty or damages for employees' negligent delay in delivery of interstate message, where delay was not authorized, participated in, or ratified by company. Western Union Tel. Co. v. Wallace, 164 Miss. 759, 146 So. 142, 1933 Miss. LEXIS 264 (Miss. 1933).

5. —Limitation of liability.

Conditions on back of interstate telegram exempting company from damages beyond stated amount held binding. Western Union Tel. Co. v. Allsworth, 124 Miss. 214, 124 Miss. 221, 86 So. 762, 1920 Miss. LEXIS 502 (Miss. 1921).

Stipulation limiting liability as to interstate telegram held valid. Western Union Tel. Co. v. Thompson, 123 Miss. 441, 86 So. 273, 1920 Miss. LEXIS 40 (Miss. 1920).

Limitation of liability for mistake in unrepeated interstate message held binding on sendee. Western Union Tel. Co. v. Bourn, 122 Miss. 67, 84 So. 143, 1920 Miss. LEXIS 419 (Miss. 1920).

A stipulation that the company will not be liable beyond the charge paid for the transmission for mistakes in unrepeated messages or errors in transmitting cipher messages is unavailing as a defense under Const. 1890, § 195. Postal Tel. & Cable Co. v. Wells, 82 Miss. 733, 35 So. 190, 1903 Miss. LEXIS 193 (Miss. 1903).

A stipulation printed on the back of telegraph blank on which a message was written and transmitted in Massachusetts that the company should not be liable for mistakes and delays in the transmission or delivery of an unrepeated message beyond the amount received for sending it is to be determined by the statutes of that state, as construed by its supreme court, although such construction is in conflict with the principles of the common law. Shaw v. Postal Tel. Cable Co., 79 Miss. 670, 31 So. 222, 1901 Miss. LEXIS 109 (Miss. 1901).

Such a contract if made in this state would have been void as exempting the company from liability for its negligence. Shaw v. Postal Tel. Cable Co., 79 Miss. 670, 31 So. 222, 1901 Miss. LEXIS 109 (Miss. 1901).

6. Time limit on presentation of claim.

A stipulation requiring a written claim for damages to be presented within sixty days after the receipt of the message is reasonable and valid. Hartzog v. Western Union Tel. Co., 84 Miss. 448, 36 So. 539, 1904 Miss. LEXIS 67 (Miss. 1904).

A stipulation on the printed forms of a telegraph company making the right to damages and the statutory penalty dependent on a presentation of the claim in writing within sixty days after reception for transmission is binding upon sender and sendee. Clements v. Western Union Tel. Co., 77 Miss. 747, 27 So. 603, 1900 Miss. LEXIS 8 (Miss. 1900).

The statute [Code 1942, § 7835] applies in favor of the sendee as well as the sender. Western Union Tel. Co. v. Allen, 66 Miss. 549, 6 So. 461, 1889 Miss. LEXIS 145 (Miss. 1889).

7. Evidence.

A verdict for plaintiff under this section [Code 1942, § 7835] will not be disturbed where there is evidence to support it, although there be a conflict in the evidence as to whether the delay was in transmission or delivery. Western Union Tel. Co. v. Pallotta, 81 Miss. 216, 32 So. 310, 1902 Miss. LEXIS 105 (Miss. 1902).

8. Penalty.

Under the federal rule, neither the state statutory penalty nor damages for mental anguish alone can be recovered; and punitive damages are not recoverable against a master for the wilful or grossly negligent act of an agent or servant, unless he participated in the wrongful act, expressly or impliedly, or by his conduct authorized or ratified it before or after it was committed. Western Union Tel. Co. v. Wallace, 164 Miss. 759, 146 So. 142, 1933 Miss. LEXIS 264 (Miss. 1933).

The statutory penalty cannot be recovered for failure to deliver message, the statute expressly applying only to delay in delivery or incorrect transmission. Postal Telegraph-Cable Co. v. Ross, 111 Miss. 649, 71 So. 904, 1916 Miss. LEXIS 356 (Miss. 1916).

The statutory penalty is not recoverable where the message is to be delivered beyond the limits of the state. Alexander v. Western Union Tel. Co., 66 Miss. 161, 5 So. 397, 1888 Miss. LEXIS 82 (Miss. 1888).

9. Damages, generally.

Under the federal rule, neither the state statutory penalty nor damages for mental anguish alone can be recovered; and punitive damages are not recoverable against a master for the wilful or grossly negligent act of an agent or servant, unless he participated in the wrongful act, expressly or impliedly, or by his conduct authorized or ratified it before or after it was committed. Western Union Tel. Co. v. Wallace, 164 Miss. 759, 146 So. 142, 1933 Miss. LEXIS 264 (Miss. 1933).

Damages for mental anguish alone, not recoverable for nondelivery of interstate telegram. Burleson v. Thomas, 123 Miss. 735, 86 So. 577, 1920 Miss. LEXIS 76 (Miss. 1920).

Punitive damages and damages for mental pain and suffering may be recovered if telegraph company is guilty of wilful neglect in failing to deliver message promptly. Western Union Tel. Co. v. Teague, 117 Miss. 401, 77 So. 302, 78 So. 610, 1918 Miss. LEXIS 146 (Miss. 1918).

10. —Punitive damages.

Under the federal rule, neither the state statutory penalty nor damages for mental anguish alone can be recovered; and punitive damages are not recoverable against a master for the wilful or grossly negligent act of an agent or servant, unless he participated in the wrongful act, expressly or impliedly, or by his conduct authorized or ratified it before or after it was committed. Western Union Tel. Co. v. Wallace, 164 Miss. 759, 146 So. 142, 1933 Miss. LEXIS 264 (Miss. 1933).

Punitive damages not recoverable for agent's unauthorized act in delaying transmission of interstate telegram under federal law. Western Union Tel. Co. v. Thompson, 123 Miss. 441, 86 So. 273, 1920 Miss. LEXIS 40 (Miss. 1920).

Interstate telegram is governed as to punitive damages by federal law. Postal Telegraph-Cable Co. v. Eubanks, 121 Miss. 530, 83 So. 678, 1920 Miss. LEXIS 98 (Miss. 1920).

Telegraph company failing to deliver message and offering no excuse therefore held liable for punitive damages. Western Union Tel. Co. v. Teague, 117 Miss. 401, 77 So. 302, 78 So. 610, 1918 Miss. LEXIS 146 (Miss. 1918); Steinberger v. Western Union Tel. Co., 97 Miss. 260, 52 So. 691, 1910 Miss. LEXIS 262 (Miss. 1910).

Mississippi and Alabama laws authorize recovery of punitive damages for wilful and wanton neglect of telegraph company in sending and delivering message, but federal law does not unless telegraph company be shown to have participated in wrong of its servants or ratified same. Dickerson v. Western Union Tel. Co., 114 Miss. 115, 74 So. 779, 1917 Miss. LEXIS 10 (Miss. 1917), overruled, Western Union Tel. Co. v. Norman, 121 Miss. 128, 83 So. 465, 1919 Miss. LEXIS 154 (Miss. 1920).

It was error to refuse to submit question of punitive damages to jury where servants of telegraph company through neglect and without excuse failed to deliver message within proper limits. Postal Telegraph-Cable Co. v. Ross, 111 Miss. 649, 71 So. 904, 1916 Miss. LEXIS 356 (Miss. 1916).

Punitive damages held not recoverable where delay caused by strike; punitive damages not recoverable in absence of malice, fraud, oppression, wilful wrong, or such wanton, reckless, or grossly careless conduct as is equivalent thereto. Western Union Tel. Co. v. Miller, 97 Miss. 225, 52 So. 701, 1910 Miss. LEXIS 267 (Miss. 1910).

RESEARCH REFERENCES

Am. Jur.

74 Am. Jur. 2d, Telecommunications §§ 44, 65 et seq.

23 Am. Jur. Pl & Pr Forms (Rev), Telecommunications, Forms 121 et seq., 126.

21 Am. Jur. Proof of Facts 783, Sending and Receipt of Telegrams.

CJS.

86 C.J.S., Telecommunications §§ 119, 129 et seq.

§ 77-9-707. Evidence of transmission of telegram in suits against telegraph companies.

In any suit against a telegraph company for nondelivery or failure to promptly deliver any telegram in this state, the copy of the telegram received and transcribed by such company's operator at the office of final destination shall be conclusive evidence in the hands of the bona fide addressee of the filing of the original at the receiving office of such telegram by the sender thereof, and may be introduced at the trial of such suit as the best evidence of the filing of the original at the receiving office of such telegram by the sender thereof.

HISTORY:
Codes, Hemingway's 1917, § 7667; 1930, § 7060; 1942, § 7836; Laws, 1916, ch. 133.

§ 77-9-709. Duty of telegraph and telephone companies to transmit public messages.

Telegraph or telephone companies or associations shall be bound, on application of any officer of this state, or of the United States, in case of any war, insurrection, riot, or other civil commotion or resistance of public authority, or for the prevention and punishment of crime, or for the arrest of persons suspected or charged therewith, to give to the communications of such officers immediate dispatch at the price of ordinary communications of the same length.

HISTORY:
Codes, 1857, ch. 35, art. 49; 1871, § 2434; 1880, § 1039; 1892, § 857; 1906, § 928; Hemingway's 1917, § 4102; 1930, § 7064; 1942, § 7840.

Cross References —
Criminal offense of refusing or omitting to transmit, or altering, governmental messages, see § 97-25-51.

§ 77-9-711. Erection of telegraph and telephone lines.

All companies or associations of persons incorporated or organized for the purpose of constructing telegraph or telephone lines shall be authorized to construct the same, and to set up and erect their posts and fixtures along and across any of the public highways, streets, or waters, and along and across all turnpikes, railroads, and canals, and also through any of the public lands. Such lines, posts and fixtures shall be so constructed and placed as not to be dangerous to persons or property, and as not to interfere with the common use of such roads, streets, or waters, or with the convenience of any landowner more than may be unavoidable. In case it shall be necessary to cross any highway, such lines, posts and fixtures shall be so constructed as to cross such highway at right angles.

HISTORY:
Codes, 1857, ch. 35, art. 45; 1871, § 2430; 1880, § 1065; 1892, § 854; 1906, § 925; Hemingway's 1917, § 4099; 1930, § 7061; 1942, § 7837.

Cross References —
Law of eminent domain generally, see Chapter 27 of Title 11.

Criminal offense of injuring or destroying property of telegraph or telephone company, see § 97-25-53.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Extent of authority.
3. Duty of care and liability for injury.

1. In general.
A telephone company which has acted upon the grant of a right to construct its lines in city streets may not thereafter constitutionally be required to pay a charge for the privilege.

Southern Bell Tel. & Tel. Co. v. Meridian, 241 Miss. 678, 131 So. 2d 666, 1961 Miss. LEXIS 385 (Miss. 1961).

The rights of a telephone company under this statutory grant are not lost by obtaining a municipal franchise. Southern Bell Tel. & Tel. Co. v. Meridian, 241 Miss. 678, 131 So. 2d 666, 1961 Miss. LEXIS 385 (Miss. 1961).

2. Extent of authority.

Rights acquired under this section [Code 1942, § 7837] are not exceeded by operating under streets, or by using telephone lines for the transmission of radio, television, teletype and other modern communication developments. Southern Bell Tel. & Tel. Co. v. Meridian, 241 Miss. 678, 131 So. 2d 666, 1961 Miss. LEXIS 385 (Miss. 1961).

3. Duty of care and liability for injury.

A telegraph pole outside of the paved road and established long after the construction of the telegraph line which the driver of an automobile had occasion to observe for years before she turned of the right of way when blinded by the lights of an approaching car and drove into the pole was not, in the absence of any prior collision with the pole or objection from the board of supervisors, so constructed and placed as to be dangerous to persons or property, or the proximate cause of the injury sustained by the driver. Western Union Tel. Co. v. Perry, 200 Miss. 469, 27 So. 2d 688, 1946 Miss. LEXIS 311 (Miss. 1946).

Telephone lines crossing a highway must be high enough for usual and ordinary travel in that area, including usual or ordinary commercial uses of highway, but are not required on pain of liability to be high enough for extraordinary travel as to which traveler must keep a lookout. Burch v. Southern Bell Tel. & Tel. Co., 178 Miss. 407, 173 So. 300, 1937 Miss. LEXIS 215 (Miss. 1937).

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of-way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. 2001 Miss. Op. Att'y Gen. 747.

RESEARCH REFERENCES

ALR.

Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway. 51 A.L.R.4th 602.

Liability of electric company to one other than employee for injury or death arising from commencement or resumption of service. 46 A.L.R.5th 423.

Liability of owner of wires, poles, or structures struck by aircraft for resulting injury or damage. 49 A.L.R.5th 659.

Am. Jur.

39 Am. Jur. 2d, Highways, Streets, and Bridges §§ 266-268.

17 Am. Jur. Legal Forms 2d, Telecommunications §§ 245:282 et seq.

13 Am. Jur. Pl & Pr Forms (Rev), Highways, Streets, and Bridges, Form 131 (complaint, petition, or declaration by personal representative against municipality and telephone company alleging negligent placing of telephone poles in highway).

CJS.

86 C.J.S., Telecommunications §§ 34 through 53 et seq.

§ 77-9-713. Local authorities may regulate construction and maintenance of lines.

The board of supervisors of any county, and the governing authorities of any city, town or village, through which any telegraph or telephone line may pass, shall have power to regulate, within their respective limits, the manner in which the same shall be constructed and maintained, with a view to the safe and convenient use of the public highways and streets. If the proprietors of any telegraph or telephone line refuse or omit to comply with such regulations, the board of supervisors, or the authorities of the city, town or village, may cause such line to be abated within its jurisdiction as a nuisance.

HISTORY:

Codes, 1857, ch. 35, art. 46; 1871, § 2431; 1880, § 1066; 1892, § 855; 1906, § 926; Hemingway's 1917, § 4100; 1930, § 7062; 1942, § 7838.

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. 2001 Miss. Op. Att'y Gen. 747.

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Highways, Streets, and Bridges §§ 300, 301 et seq.

CJS.

86 C.J.S., Telecommunications §§ 26, 75.

§ 77-9-715. Liability for damages caused by erection, continuance and use of lines.

Telegraph and telephone companies or associations shall be responsible for any damages which any person shall sustain by the erection, continuance, and use of telegraph and telephone lines and the fixtures thereof. In any action for the recovery thereof brought by any owner or possessor of land over or along which such line may run, damages shall be assessed for the permanent continuance of such line and fixtures, and on payment thereof the right to continue and use such line and fixtures shall exist as if by leave and license of the owner of the land.

HISTORY:

Codes, 1857, ch. 35, art. 47; 1871, § 2432; 1880, § 1065; 1892, 856; 1906, § 927; Hemingway's 1917, § 4101; 1930, § 7063; 1942, § 7839.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Statute of frauds.
3. Constructive license.
4. Damages for trespass.

1. In general.

A telegraph company is liable if its laborers, clearing its right of way, cut trees on adjoining land of another, although done contrary to the positive orders of the superintendent, if it resulted from the negligence of the latter. Clay v. Postal Tel. Co., 70 Miss. 406, 11 So. 658, 1892 Miss. LEXIS 66 (Miss. 1892).

2. Statute of frauds.

Where a telephone company's constructive license to continue and use telephone lines and fixtures derived from Miss. Code Ann. § 77-9-

715, the constructive license did not violate the statute of frauds, Miss. Code Ann. § 15-3-1, because the statute of frauds did not apply given that the telephone company's rights arose by operation of law and did not come from a contract. Marlow, LLC v. BellSouth Telecomms., Inc., 2011 U.S. Dist. LEXIS 54309 (S.D. Miss. May 18, 2011), aff'd in part and rev'd in part, 686 F.3d 303, 2012 U.S. App. LEXIS 13425 (5th Cir. Miss. 2012).

3. Constructive license.

Where a telephone company had telephone lines and fixtures that ran over a landowner's private property, the telephone company had a constructive license to use the lines and fixtures pursuant to Miss. Code Ann. § 77-9-715 because § 77-9-715 was not limited to construction of telephone lines on public rights-of-way; thus, the landowner was not entitled to an injunction requiring the removal of the telephone company's equipment. Marlow, LLC v. BellSouth Telecomms., Inc., 2011 U.S. Dist. LEXIS 54309 (S.D. Miss. May 18, 2011), aff'd in part and rev'd in part, 686 F.3d 303, 2012 U.S. App. LEXIS 13425 (5th Cir. Miss. 2012).

4. Damages for trespass.

Where a telephone company had a constructive license under Miss. Code Ann. § 77-9-715 to use telephone lines and fixtures that ran over a landowner's private property, the landowner was not entitled to any damages for trespass because the telephone company had paid the prior owners of the property compensation for the permanent right to use the land and keep it cleared. Marlow, LLC v. BellSouth Telecomms., Inc., 2011 U.S. Dist. LEXIS 54309 (S.D. Miss. May 18, 2011), aff'd in part and rev'd in part, 686 F.3d 303, 2012 U.S. App. LEXIS 13425 (5th Cir. Miss. 2012).

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. 2001 Miss. Op. Att'y Gen. 747.

RESEARCH REFERENCES

ALR.

Liability of telephone company for injury by noise or electric charge transmitted over line. 99 A.L.R.3d 628.

Am. Jur.

13 Am. Jur. Pl & Pr Forms (Rev), Highways, Streets, and Bridges, Form 131.

23 Am. Jur. Pl & Pr Forms (Rev), Telecommunications, Forms 161 et seq.

§ 77-9-717. Exercise of eminent domain for construction of new lines.

Telegraph and telephone companies, for the purpose of constructing new lines, are empowered to exercise the right of eminent domain, as provided in Chapter 27 of Title 11, Mississippi Code of 1972.

HISTORY:

Codes, 1892, § 858; 1906, § 929; Hemingway's 1917, § 4103; 1930, § 7065; 1942, § 7841.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. "New line."
3. Prerequisites to exercise of power of eminent domain.
4. Extent of easement.

1. In general.

The Mississippi Public Service Commission has the duty, authority, and therefore jurisdiction, over public utilities who come into the state of Mississippi and attempt to invoke the statutory right of eminent domain. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

State may authorize telegraph company to condemn railroad right of way for a telegraph line. Western Union Tel. Co. v. Louisville & N. R. Co., 107 Miss. 626, 65 So. 650, 1914 Miss. LEXIS 129 (Miss. 1914), aff'd, 250 U.S. 363, 39 S. Ct. 513, 63 L. Ed. 1032, 1919 U.S. LEXIS 1756 (U.S. 1919).

Foreign telephone company has right of eminent domain. Cumberland Tel. & Tel. Co. v. Yazoo & M. V. R. Co., 90 Miss. 686, 44 So. 166, 1907 Miss. LEXIS 115 (Miss. 1907).

2. "New line."

Construction of line between two cities between which the company had no direct line held a new line within this section [Code 1942, § 7841]. Cumberland Tel. & Tel. Co. v. Yazoo & M. V. R. Co., 90 Miss. 686, 44 So. 166, 1907 Miss. LEXIS 115 (Miss. 1907).

3. Prerequisites to exercise of power of eminent domain.

A telephone company failed to meet the first prerequisite to the exercise of the statutory right of eminent domain where there was no evidence of valid, affirmative action on the part of the telephone company transforming the statutory authority of eminent domain into action. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

A New York corporation which provided long distance telecommunications across the country would be entitled to invoke the power of eminent domain if it proved that it was a telephone company constructing new lines which had taken the necessary corporate steps to invoke the power of eminent domain and had obtained a certificate of public convenience and necessity from the Mississippi Public Service Commission. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

The special court of eminent domain properly dismissed a condemnation petition brought by a New York corporation, which provided long distance telephone service across the country, for failure to first obtain a certificate of public convenience and necessity from the Mississippi Public Service Commission as a condition precedent to the exercise of eminent domain by a public utility. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

A New York corporation which provided long distance telephone service across the country was required to comply with state law and, as a condition precedent to the exercise of the statutory right of eminent domain pursuant to § 77-9-717, to submit to the jurisdiction of the Mississippi Public Service Commission and obtain the following: (1) a determination that the telephone company qualified as an entity to which the legislature had granted the power of eminent domain pursuant to §§ 11-27-1 and 77-9-717; (2) a determination that the telephone company had complied with state law in invoking the statutory power of eminent domain; and (3) a certificate of public convenience and necessity for the particular taking in question. American Tel. & Tel. Co. v. Purcell Co., 606 So. 2d 93, 1990 Miss. LEXIS 790 (Miss. 1990).

4. Extent of easement.

An easement acquired by eminent domain for telephone and telegraph lines may be used for television transmission along with other telephone and telegraph purposes and such use was a public use and such television transmission would be done by company as common carrier. Ball v. American Tel. & Tel. Co., 227 Miss. 218, 86 So. 2d 42, 1956 Miss. LEXIS 677 (Miss. 1956).

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors may charge actual damages for use of county rights-of-way by a communications company, but only after a finding of fact is made in accordance with Southern Bell v. City of Meridian, 131 So. 2d 666, 241 Miss. 678 (Miss. 1961); if that case has no application to the circumstances presented, then a county may charge damages for use of its rights-of way; however, there is no statutory authority for a county to charge a franchise fee or other charges for the mere operation of a communications company in the county without regard to whether the company uses the public rights-of-way. 2001 Miss. Op. Att'y Gen. 747.

§ 77-9-719. Consolidation and merger of telephone lines, exchanges and property authorized.

All telephone lines, exchanges and properties in any county of the State of Mississippi may be consolidated and merged so as to create and establish a telephone system in such county and to enable all patrons of such telephone properties to secure telephonic service over and through one system. When such merger and consolidation of the said telephone properties shall have been effected it shall be done in such manner as to eliminate all telephone exchanges of the said constituent companies in such consolidation or merger in such county saving and excepting one system of exchanges. When such consolidation and merger shall have been effected, the same shall be done in such manner as to provide one central telephone exchange in each of the municipalities situated in the county, in which such consolidation and merger shall have been effected.

HISTORY:
Codes, 1930, § 7067; Laws, 1943, § 7843; Laws, 1922, ch. 268.

RESEARCH REFERENCES

Am. Jur.
26 Am. Jur. 2d, Eminent Domain § 65.

CJS.
86 C.J.S., Telecommunications §§ 26, 54 and 55.

§ 77-9-721. Local authorities, public service commission, and attorney-general must consent to consolidation and merger.

The consolidation and merger of the said telephone properties in any county or in any of the municipalities located in such county shall not take effect until the individuals, associations or corporations owning the said telephone properties which are operating in such county or such municipalities shall have first obtained from the governing authority of each of the municipalities affected by such consolidation and merger as is proposed to be effected, the consent of such municipality to such consolidation and merger. Such consent shall be evidenced by an order of the governing authority of such municipality or municipalities duly and regularly entered upon the minutes of the said governing authority, giving its assent to such merger and consolidation. No consolidation and merger of the said telephone properties shall be effected until the individuals, associations or corporations owning such telephone system shall have also obtained the consent of the public service commission of the State of Mississippi to such consolidation and merger to be evidenced by an order of the said commission, duly and regularly entered upon its minutes. No consolidation of the telephone properties in such county or the municipalities located therein, shall be effected until the individuals, associations or corporations owning such telephone properties shall have produced in the office of the commission duly certified copies of the orders of the governing authority of the municipality, or municipalities, affected by such proposed consolidation and merger evidencing its assent thereto, as above provided. The said consolidation and merger shall not become finally effective and complete until the attorney-general of the State of Mississippi shall have given his certificate that such consolidation and merger is not contrary to the public welfare of the State of Mississippi and is in accordance with the terms of this section.

HISTORY:
Codes, 1930, § 7068; 1942, § 7844; Laws, 1922, ch. 268.

§ 77-9-723. Nothing in preceding sections shall mandate consolidation and merger.

Nothing in Sections 77-9-719 and 77-9-721, shall be construed so as to require and compel any rural telephone system now being operated in any of the counties of the State of Mississippi, or that may be hereafter established in any of the said counties, to merge and consolidate with each other, or with any other telephone system now being operated in said counties. Nothing in said sections shall be construed so as to require telephone systems being operated and maintained by local communities for the use and benefit of the localities or communities only, to merge and consolidate with each other, or with other telephone systems.

HISTORY:
Codes, 1930, § 7069; 1942, § 7845; Laws, 1922, ch. 268.

§ 77-9-725. Blacklisting of telegraphers because of union affiliation is unlawful.

It shall be unlawful for any telegraph company, telephone company, telegraph press association, railroad company, or any leased wire firm or private individual doing business in this state, and employing telegraphers for the purpose of transmitting telegraph dispatches for the general public, or any press association or private business, or in the operation of any railroad, to discriminate against any such telegrapher in its service or out of its service, or to blacklist or refuse employment to any telegrapher solely because of such telegrapher's affiliation with or membership in any lawful organization or trade or labor union of telegraphers.

HISTORY:
Codes, Hemingway's 1917, § 7688; 1930, § 7131; 1942, § 7890; Laws, 1908, ch. 93.

Cross References —
Criminal offense of preventing persons from engaging in lawful vocations, see §§ 97-23-39 et seq.

§ 77-9-727. Conspiracy to blacklist telegrapher is unlawful.

It shall be unlawful for any two or more such telegraph or telephone companies, telegraph press associations, railroad companies or leased wire firms or private individuals doing business in this state and employing telegraphers, to conspire, contract, mutually agree or co-operate to discriminate against, blacklist or refuse employment to any telegrapher merely on account of such telegrapher's affiliation with or membership in any lawful organization or trade or labor union of telegraphers.

HISTORY:
Codes, Hemingway's 1917, § 7690; 1930, § 7133; 1942, § 7892; Laws, 1908, ch. 93.

Cross References —
Criminal offense of preventing persons from engaging in lawful vocations, see §§ 97-23-39 et seq.

§ 77-9-729. Telegrapher discriminated against may recover actual and exemplary damages.

Any such telegraph or telephone company, telegraph press association, railroad company or leased wire firm or private individual violating Section 77-9-725, shall be liable in actual and exemplary damages to the person so discriminated against.

Any telegraph or telephone company, telegraph press association, railroad company, or leased wire firm or private individual violating Section 77-9-727, shall be jointly and severally liable in actual and exemplary damages to the party so aggrieved.

HISTORY:
Codes, Hemingway's 1917, §§ 7689, 7691; 1930, §§ 7132, 7134; 1942, §§ 7891, 7893; Laws, 1908, ch. 93.

Cross References —
Punitive damages, generally, see § 11-1-65.

RESEARCH REFERENCES

ALR.
Standard of proof as to conduct underlying punitive damage awards – modern status. 58 A.L.R.4th 878.

CHAPTER 11.

GAS PIPELINES AND DISTRIBUTION SYSTEMS

Article 1.	Enforcement of Natural Gas Pipeline Safety Standards.	77-11-1
Article 3.	Safety and Inspection Standards of Municipal Gas Systems.	77-11-101
Article 5.	Taxation on Municipal Gas Utilities for Benefit of Public Service Commission.	77-11-201
Article 7.	Intrastate Gas Pipelines.	77-11-301

ARTICLE 1.

ENFORCEMENT OF NATURAL GAS PIPELINE SAFETY STANDARDS.

Sec.	
77-11-1.	Declaration of purpose.
77-11-3.	Civil penalties.
77-11-5.	Restraint of violations and enforcement of standards.
77-11-7.	Application of penalties.

§ 77-11-1. Declaration of purpose.

The purpose of this article is to make provision for the enforcement by the Mississippi Public Service Commission of Natural Gas Pipeline Safety Standards adopted both by the Mississippi Public Service Commission and by the U. S. Department of Transportation, pursuant to the provisions of Article 1, Chapter 3 of this title, and the Federal Natural Gas Pipeline Safety Act of 1968, 49 USC, sections 1671 et seq., by way of injunctive and monetary sanctions substantially the same as are provided under Section 1678 and Section 1679 of said federal act, so that the commission may certify as the regulatory authority as provided in said federal act.

HISTORY:

Codes, 1942, § 7897-01; Laws, 1971, ch. 331, § 1, eff sixty (60) days from and after passage (approved March 6, 1971).

Cross References —

Advance notice by excavators of digging near gas pipelines, see §§ 77-13-1 et seq.

Federal Aspects—

The Federal Natural Gas Pipeline Safety Act of 1968, referred to in this section, was amended and incorporated into The Natural Gas Pipeline Safety Act (49 USCS §§ 60101 et seq.).

RESEARCH REFERENCES

Am. Jur.

61 Am. Jur. 2d, Pipelines §§ 10 et seq.

28 Am. Jur. Proof of Facts 2d 371, Negligent Installation or Maintenance of Gas Main or Supply Line.

§ 77-11-3. Civil penalties.

(1) Any person operating a public utility subject to the jurisdiction of the Mississippi Public Service Commission under subparagraph (ii) of paragraph (d) of Section 77-3-3, and Section 77-3-5, who violates any provision of any

Natural Gas Pipeline Safety Standard adopted both by the United States Department of Transportation, pursuant to the provisions of the Federal Natural Gas Pipeline Safety Act of 1968, and by the commission pursuant to Article 1, Chapter 3, of this title, shall be subject to a civil penalty not to exceed one thousand dollars ($1,000.00), payable to the State of Mississippi for each such violation for each day that such violation persists. The maximum civil penalty shall not exceed two hundred thousand dollars ($200,000.00) for any related series of violations.

(2) Any such civil penalty may be imposed by the chancery court of the county in which the violation occurs or in which the person violating the same resides or has his or its principal place of business, upon complaint of the commission and after opportunity for a hearing thereon. Any such civil penalty may be compromised by the commission, subject to the approval of the court. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State of Mississippi to the person charged or may be recovered under judgment of said chancery court, and upon collection shall be paid to the treasury of the State of Mississippi.

HISTORY:
Codes, 1942, § 7897-02; Laws, 1971, ch. 331, § 2, eff sixty (60) days from and after passage (approved March 6, 1971).

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1), by substituting “subparagraph (ii) of paragraph (d)” for “subparagraph (2) of paragraph (d).” The Joint Committee ratified the correction at its July 22, 2010, meeting.

Federal Aspects—
The Federal Natural Gas Pipeline Safety Act of 1968, referred to in this section, was amended and incorporated into the natural Gas Pipeline Safety Act, see 49 USCS §§ 60101 et seq.

§ 77-11-5. Restraint of violations and enforcement of standards.

(1) Pursuant to the provisions of Section 77-3-75, the chancery court, First Judicial District of Hinds County, Mississippi, shall have jurisdiction to restrain violations of the Natural Gas Pipeline Safety Standards adopted by both the United States Department of Transportation and the Mississippi Public Service Commission, and to enforce, by mandamus, injunction or other appropriate remedy, orders of said commission adopting such standards. Whenever practicable, the commission shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. However, the failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(2) In any proceeding for criminal contempt for violation of an injunction

or restraining order issued under this article, trial shall be by the court, or upon demand of the accused, by a jury and, upon demand of the accused, a jury trial for criminal contempt shall be transferred to the chancery court of the county in which the accused resides or has his principal place of business.

HISTORY:
Codes, 1942, § 7897-03; Laws, 1971, ch. 331, § 3, eff sixty (60) days from and after passage (approved March 6, 1971).

Federal Aspects—
The Federal Natural Gas Pipeline Safety Act of 1968, referred to in this section, was amended and incorporated into The Natural Gas Pipeline Safety Act (49 USCS §§ 60101 et seq.).

§ 77-11-7. Application of penalties.

The penalties for injunction and monetary sanctions provided in this article apply only to the provisions of this article, and are separate and apart from those otherwise provided by Article 1, Chapter 3, of this title.

HISTORY:
Codes, 1942, § 7897-04; Laws, 1971, ch. 331, § 4, eff sixty (60) days from and after passage (approved March 6, 1971).

ARTICLE 3.

SAFETY AND INSPECTION STANDARDS OF MUNICIPAL GAS SYSTEMS.

Sec.
77-11-101. Commission shall provide for standards of safety and inspection of gas districts, municipal gas systems, and certain pipelines.
77-11-103. Commission shall prescribe standards and procedures.
77-11-105. Enforcement of federal safety standards.
77-11-107. Promulgation of rules and regulations; inspection; right of access.
77-11-109. Penalty.
77-11-111. Limitation of commission's authority.

§ 77-11-101. Commission shall provide for standards of safety and inspection of gas districts, municipal gas systems, and certain pipelines.

The Mississippi Public Service Commission is hereby vested with authority to provide for standards of safety and inspection of gas districts, or municipally owned and/or operated transmission or distribution of natural, artificial, or mixed natural and artificial gas, by means of transportation, transmission or distribution facilities and equipment municipally owned and/or operated by said municipality or gas district. To the maximum extent permissible under the Natural Gas Pipeline Safety Act of 1968, the commission is also hereby vested with authority to provide for standards of safety and inspection of facilities owned and/or operated as private pipelines, private pipeline carriers or private pipeline carriers by contract which are not engaged in the transmission, sale, sale for resale or distribution of gas to the public for compensation and which are not therefore subject to the general jurisdiction of the commission as public utilities, which said facilities are used for the intrastate transmission or distribution of natural, artificial and mixed natural and artificial gas by means of intrastate transportation, transmission or distribution facilities or equipment owned and/or operated by any such pipeline.

HISTORY:

Codes, 1942, § 7897-11; Laws, 1971, ch. 395, § 1; Laws, 1973, ch. 405, § 1, eff from and after passage (approved March 28, 1973).

Cross References —

Advance notice by excavators of digging near gas pipelines, see §§ 77-13-1 et seq.

Levy of tax for support of public service commission in carrying out its duties under this article, see Article 5 of this chapter.

Federal Aspects—

The Federal Natural Gas Pipeline Safety Act of 1968, referred to in this section, was amended and incorporated into The Natural Gas Pipeline Safety Act (49 USCS §§ 60101 et seq.).

RESEARCH REFERENCES

Am. Jur.

10 Am. Jur. Pl & Pr Forms (Rev), Explosions and Explosives, Form 42.1 (wrongful death actions against oil company resulting from explosion caused by leaking gas line).

25 Am. Jur. Trials 415, Preparing For and Trial of a Gas Pipeline Leak and Explosion Case.

28 Am. Jur. Proof of Facts 2d 371, Negligent Installation or Maintenance of Gas Main or Supply Line.

§ 77-11-103. Commission shall prescribe standards and procedures.

To carry out the provisions of this article, the public service commission shall prescribe the safety standards and inspection procedures for said gas districts or municipally owned and/or operated gas systems and for said private pipelines, private pipeline carriers and private pipeline carriers by contract.

HISTORY:

Codes, 1942, § 7897-12; Laws, 1971, ch. 395, § 2; Laws, 1973, ch. 405, § 2, eff from and after passage (approved March 28, 1973).

RESEARCH REFERENCES

Am. Jur.

10 Am. Jur. Pl & Pr Forms (Rev), Explosions and Explosives, Form 42.1 (wrongful death actions against oil company resulting from explosion caused by leaking gas line).

§ 77-11-105. Enforcement of federal safety standards.

The public service commission shall have the right, power and authority to provide and make certification, reports and information to the secretary of the United States Department of Transportation; to enter into agreements with said secretary to carry out the purposes of this article; to enforce federal safety standards in the State of Mississippi in lieu of enforcement by the said department of transportation; and to exercise regulatory jurisdiction over the safety of pipeline systems owned and/or operated by gas districts or municipalities and said private pipelines, private pipeline carriers and private pipeline carriers by contract in the transportation of gas as permitted by the Natural Gas Pipeline Safety Act of 1968.

HISTORY:
Codes, 1942, § 7897-13; Laws, 1971, ch. 395, § 3; Laws, 1973, ch. 405, § 3, eff from and after passage (approved March 28, 1973).

Federal Aspects—
The Federal Natural Gas Pipeline Safety Act of 1968, referred to in this section, was amended and incorporated into the natural Gas Pipeline Safety Act, see 49 USCS §§ 60101 et seq.

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. Trials 415, Preparing For and Trial of a Gas Pipeline Leak and Explosion Case.

28 Am. Jur. Proof of Facts 2d 371, Negligent Installation or Maintenance of Gas Main or Supply Line.

§ 77-11-107. Promulgation of rules and regulations; inspection; right of access.

In order to determine whether or not each gas district or municipally owned and/or operated gas system or pipeline or privately owned or operated gas pipeline is operating in compliance with the required safety standards and to enforce such compliance, the Mississippi Public Service Commission shall have the right, power and authority to promulgate reasonable rules and regulations to facilitate such purpose. Authorized personnel of the commission shall be authorized to inspect all such gas districts, municipally or privately owned and/or operated gas systems, pipelines, facilities and equipment and shall have the right of access and entry to all buildings and property owned, leased and operated by such systems. Other information shall be made available to the commission upon request.

HISTORY:
Codes, 1942, § 7897-14; Laws, 1971, ch. 395, § 4; Laws, 1973, ch. 405, § 4, eff from and after passage (approved March 28, 1973).

RESEARCH REFERENCES

Am. Jur.
28 Am. Jur. Proof of Facts 2d 371, Negligent Installation or Maintenance of Gas Main or Supply Line.

§ 77-11-109. Penalty.

Each gas district or municipally owned utility or privately owned and/or operated gas pipeline in the State of Mississippi shall be subject to the same penalty as other gas utilities for failure to comply with the gas pipeline safety standards adopted by the Mississippi Public Service Commission.

HISTORY:
Codes, 1942, § 7897-15; Laws, 1971, ch. 395, § 5; Laws, 1973, ch. 405, § 5, eff from and after passage (approved March 28, 1973).

§ 77-11-111. Limitation of commission's authority.

This article authorizes the Mississippi Public Service Commission to exercise jurisdiction over gas pipeline safety and inspection of gas districts or municipally owned and/or operated gas utilities or privately owned and operated gas pipelines which do not sell, transport or distribute gas to the public, and whose facilities are used for the intrastate transmission or distribution of natural, artificial and mixed natural and artificial gas, but all other operations, services and rates of gas districts or municipally owned and/or operated gas utilities or such privately owned and operated gas pipelines which do not sell, transport or distribute gas to the public shall remain exclusively with the gas districts or municipality or municipally owned and/or operated gas utility or with the owner and/or operator of such private pipeline not serving the public.

HISTORY:
Codes, 1942, § 7897-16; Laws, 1971, ch. 395, § 6; Laws, 1973, ch. 405, § 6, eff from and after passage (approved March 28, 1973).

ARTICLE 5.

TAXATION ON MUNICIPAL GAS UTILITIES FOR BENEFIT OF PUBLIC SERVICE COMMISSION.

Sec.
77-11-201. Levy of tax on municipal gas utilities to provide commission with funds for safety regulation and inspection; funding of agency expenses; deposit of monies into State General Fund.

§ 77-11-201. Levy of tax on municipal gas utilities to provide commission with funds for safety regulation and inspection; funding of agency expenses; deposit of monies into State General Fund.

All reasonable and necessary operating expenses of the administration of the duties imposed by law upon the Public Service Commission, including the salaries of personnel, in its regulation, inspection and supervision of municipally owned and/or operated gas utilities operating within the State of Mississippi shall be provided as follows: There is hereby levied a tax. The amount of said tax is the sum of Twenty-five Thousand Dollars ($25,000.00) per year which shall be prorated by the State Tax Commission among the municipally owned and/or operated gas utilities which are subject to the tax levied by this section each year, according to the gross revenue of each of such utilities from their intrastate operation during the calendar year preceding the assessment. Each utility which is subject to the tax levied by this section shall file a statement of such gross revenue by April 1 of each year showing the gross revenue for the preceding year's operation. These statements of gross revenue shall be filed with the commission and a copy thereof filed with the State Tax Commission. The State Tax Commission shall thereupon calculate the pro rata amount of tax to be paid by each of said utilities in order to provide the total amount above stated and shall thereupon submit a statement thereof to the respective utilities and the amount shown due in such statements to the respective utilities shall be paid by the respective utilities within thirty (30) days thereafter to the State Tax Commission. The State Tax Commission shall pay such funds into the State Treasury on the same day collected to the credit of the "Municipality Owned and/or Operated Gas Utilities Special Fund." All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of such chapter, and all other duties and requirements imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the Tax Commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the Mississippi Sales Tax Law except where there is a conflict, then the provisions of this chapter shall control. The term "gross revenue" as used in this section shall be deemed to be the total amount of all revenue derived by each of such utilities from its intrastate operations and the State Tax Commission is hereby authorized to make such audits as may be deemed necessary of any and all records of such utilities in order to correctly determine the amount of such gross revenue. It shall be the duty of the Department of Finance and Administration to advise the commission of the amount of money on hand from time to time. All expenses of the commission authorized by this section or any other act of the Legislature shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration, which warrants shall be issued upon requisition signed by the chairman of the commission and countersigned by one (1) of the commissioners, and said requisition shall show upon its face the purpose for which the payment is being made by reference to the minute book in which such payment was authorized. It shall be unlawful for any person to withdraw any money from said fund other than by requisition issued as provided herein. A record of all requisitions issued by the commission showing to whom, for what purpose, and date issued shall be placed upon the minute books of the commission and shall become a part of the official records of the commission.

The books and accounts of the commission shall be audited at the end of each fiscal year, and at any other time deemed necessary, by the State Auditor and a copy of such audits shall be furnished to the Governor and the commission. The State Auditor may prescribe such further accounting procedure as he deems necessary for the withdrawal of funds by the commission from said special fund. All requisitions drawn in compliance with this section shall be honored by the Department of Finance and Administration and the funds disbursed in accordance therewith. The commission shall file a report at each regular session of the Legislature showing the expenditure of all funds by the commission. All proceeds of the above-mentioned tax are hereby allocated to the commission for the purpose of this section. In the event the funds provided by said tax exceed the amount necessary for the purposes of this section at the end of any fiscal year, the commission shall certify the amount which the commission estimates will be necessary for the commission for each fiscal year to the State Tax Commission, and the State Tax Commission shall reduce the tax hereby imposed to such amount for the next fiscal year and shall collect the proportionate amount thereof as above provided.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Laws, 1973, ch. 432, § 1; Laws, 1984, ch. 478, § 33; Laws, 1998, ch. 458, § 6; Laws, 2016, ch. 459, § 63, eff from and after July 1, 2016.

Editor's Notes —

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides that, for purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing.

Laws of 1984, ch. 478, § 35, provides that "The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References —

Warrants for collection of income tax, see §§ 27-7-55, 27-7-57.

Mississippi Sales Tax Law, see § 27-65-1, et seq.

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Safety and inspection standards of gas districts, municipal gas systems, and certain pipelines, see §§ 77-11-101 et seq.

ARTICLE 7.

INTRASTATE GAS PIPELINES.

Sec.
77-11-301. Legislative findings.

Sec.	
77-11-303.	Application of article.
77-11-305.	Definitions.
77-11-307.	Exemption from requirements imposed on public utilities.
77-11-309.	Restriction on transmission, sale or distribution to industrial user serviced by gas public utility.
77-11-311.	Jurisdiction to enforce pipeline safety standards; natural gas or electric power public utility not exempt from regulation.

§ 77-11-301. Legislative findings.

The Legislature of the State of Mississippi hereby finds that the public interest will be served by fostering the construction and operation of intrastate gas pipelines in order to secure for public and private needs a dependable supply of gas which will be produced within this state. The Legislature further finds that an emergency exists because numerous commercial enterprises have been closed or restricted in operation due to a shortage of gas resulting in a loss of employment and industrial capacity within this state and threatens irreparable injury to life or property, and the possibility exists that supplies of gas for residential and health related purposes may be restricted in the future. In order to assist in alleviating these shortages, both actual and potential, the Legislature enacts this legislation.

HISTORY:
Laws, 1977, ch. 455, § 1, eff from and after passage (approved April 12, 1977).

§ 77-11-303. Application of article.

The provisions of this article shall be applicable to all intrastate gas pipelines and related facilities, which would otherwise be a public utility as defined in Section 77-3-3, Mississippi Code of 1972, for the transmission, sale, sale for resale, and distribution of natural or artificial or mixed gas used within this state for consumption by industrial users or to a public utility or a public utility owned or operated by any municipality. The provisions of this article shall also be applicable in the manner set forth herein to the gas flowing through such pipelines.

HISTORY:
Laws, 1977, ch. 455, § 2, eff from and after passage (approved April 12, 1977).

Cross References —
Regulation of public utilities, see §§ 77-3-1 et seq.

§ 77-11-305. Definitions.

For the purposes of this article, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Corporation" shall mean a private or public corporation, municipality, association, a joint stock association or a business trust.

(b) "Person" shall include a natural person, a partnership of two (2) or more persons having a joint or common interest, a cooperative, non-profit, limited dividend, or mutual association, a corporation or any other legal entity.

(c) "Municipality" shall mean any incorporated city or town or village.

(d) "Intrastate gas pipeline" shall mean the entire pipeline system owned by an entity carrying gas produced wholly within this state, which is not a field gathering system, including the primary gas pipeline and all lateral supply lines and related facilities extending therefrom to the point of sale to any industrial users, a public utility, or a public utility owned or operated by a municipality.

(e) "Public utility" as used in this article shall mean any entity as defined by Section 77-3-3(d)(ii), Mississippi Code of 1972.

(f) "Commission" shall mean the Mississippi Public Service Commission.

HISTORY:

Laws, 1977, ch. 455, § 3, eff from and after passage (approved April 12, 1977).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (e) by substituting "Section 77-3-3(d)(ii)" for "Section 77-3-3(d)(2)." The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 77-11-307. Exemption from requirements imposed on public utilities.

(1) No person who shall construct, acquire, extend or operate an intrastate gas pipeline for transmitting natural, manufactured or mixed gas for sale, sale for resale, or distribution for consumption by industrial users, public utilities, or a public utility owned or operated by a municipality, shall be deemed a public utility or be required to obtain a gas certificate or public convenience and necessity from the commission to engage in the foregoing activities.

(2) Any person engaged in the transmission, sale, sale for resale, or distribution of natural, artificial, or mixed natural and artificial gas to industrial users, public utilities, or public utilities owned or operated by municipalities, by means of transportation, transmission or distribution in an intrastate gas pipeline shall not be deemed a public utility or be required to obtain a gas certificate of public convenience and necessity from the commission.

HISTORY:

Laws, 1977, ch. 455, § 4(1, 2), eff from and after passage (approved April 12, 1977).

Cross References —

Regulation of public utilities, see §§ 77-3-1 et seq.

§ 77-11-309. Restriction on transmission, sale or distribution to industrial user serviced by gas public utility.

There shall be no transmission, sale, sale for resale, or distribution of natural, artificial, or mixed gas by an intrastate pipeline to an industrial user being served by a gas public utility holding a gas certificate of public convenience and necessity issued by the commission or to an industrial user to be located within such certificated area unless the gas public utility holding such certificate of public convenience and necessity shall have filed with the commission a statement that it is either unwilling or unable to serve said user. Provided, however, that nothing contained in this article shall prevent the sale or transmission of natural gas to an industrial user by the producer of such gas or the sale of natural gas in or within the vicinity of the field where the gas is produced.

HISTORY:
Laws, 1977, ch. 455, § 4(3), eff from and after passage (approved April 12, 1977).

Cross References —
Regulation of public utilities, see §§ 77-3-1 et seq.

§ 77-11-311. Jurisdiction to enforce pipeline safety standards; natural gas or electric power public utility not exempt from regulation.

The commission shall have jurisdiction over an intrastate gas pipeline for the enforcement of natural gas pipeline safety standards, provided that nothing in this article shall be construed to exempt any natural gas or electric power public utility from regulation by the Public Service Commission as set out in Section 77-3-35, Mississippi Code of 1972.

HISTORY:
Laws, 1977, ch. 455, § 5, eff from and after passage (approved April 12, 1977).

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. Trials 415, Preparing For and Trial of a Gas Pipeline Leak and Explosion Case.

28 Am. Jur. Proof of Facts 2d 371, Negligent Installation or Maintenance of Gas Main or Supply Line.

CHAPTER 13.

REGULATION OF EXCAVATIONS NEAR UNDERGROUND UTILITY FACILITIES

Sec.
77-13-1. Legislative intent.
77-13-3. Definitions.
77-13-5. Excavator's investigation of site; notice to utility of planned excavation.
77-13-7. Notification of damaged lines.
77-13-9. Marking location of underground facilities; timeliness.
77-13-11. Exceptions to advance notice requirement.
77-13-13. Advance notice as relieving excavator of certain liabilities.
77-13-15. Notice to one-call system.
77-13-17. Operator responsibilities.
77-13-19. Enforcement; injunctions.
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§ 77-13-1. Legislative intent.

It is the intent of the Legislature to protect underground utility facilities and other underground facilities from destruction or damage, in order to prevent death of or injury to persons, property damage to public and private property, and loss or interruption of essential utility services to the general public.

HISTORY:

Laws, 1985, ch. 494, § 1; reenacted without change, Laws, 1999, ch. 302, § 1, eff from and after July 1, 1999.

Cross References —

Safety and inspection standards for gas pipelines, see §§ 77-11-101 et seq.

§ 77-13-3. Definitions.

The words defined in this section shall have the following meanings when found in this chapter:

(a) "Abandoned facility" means any underground utility line or underground utility facilities no longer used in the conduct of the owner/operator's business and are not intended to be used in the future.

(b) "Approximate location of underground utility lines or underground facilities" means information about an operator's underground utility lines or underground facilities which is provided to a person by an operator and must be accurate within eighteen (18) inches measured horizontally from the outside edge of each side of such operator's facility, or a strip of land eighteen (18) inches either side of the operator's field mark, or the marked width of the facility or line plus eighteen (18) inches on each side of the marked width of the facility or line.

(c) "Board" means the Underground Facilities Damage Prevention Board, created by Section 77-13-29.

(d) "Calendar day" means a twenty-four-hour period.

(e) "Commission" means the Mississippi Public Service Commission.

(f) "Damage" means the substantial weakening of structural or lateral support of underground utility lines and underground facilities, penetration or destruction of any protective coating, housing or other protective devices of an underground utility line or underground facility, and the partial or complete severance of any underground utility line or underground facility, but does not include any operator's abandoned facility.

(g) "Design Information Request" means a notification made to Mississippi 811, Inc., by a person providing professional services and making a request in preparation for bidding, preconstruction engineering, or other advance planning efforts that do not involve excavation. A design information services request may not be used for excavation purposes.

(h) "Emergency excavation" means excavation at times of emergency involving danger to life, health or property or a customer service outage.

(i) "Excavate or excavation" means any operation in which earth, rock or other material or mass of material on or below the ground is moved or otherwise displaced by any means, except: (i) the tilling of the soil less than twenty-four (24) inches in depth for agricultural purposes; or (ii) an operation in which earth, rock or other material or mass of material on or below the ground is moved or otherwise displaced to a depth of less than twelve (12) inches on private property by the property owner without the use of mechanical excavating equipment; or (iii) an operation in which earth, rock or other material or mass of material on or below the ground is moved or otherwise displaced without the use of mechanical excavating equipment to a depth of less than twelve (12) inches on private property by an excavator who is not the property owner, except when such excavation is in a clearly marked underground facility right-of-way; or (iv) routine railroad maintenance activities conducted within the track structure, drainage ditches, or within the railroad right-of-way a distance not to exceed thirty (30) feet from the outside rail of the outermost track or tracks, provided this work is performed by railroad employees or railroad contractors and is carried out with reasonable care so as to protect any underground facilities properly installed in the railroad right-of-way by agreement with the railroad; or (v) routine activities of a cemetery, provided that for any cemetery that begins or expands after July 1, 2015, such activities occur only after initial notice is provided to Mississippi 811, Inc., and all affected operators have advised that there are no underground facilities within the boundaries of the subject cemetery; or (vi) routine maintenance activities carried out by or for those responsible for publicly maintained roadways and rights-of-way, provided that the activities occur entirely within the public right-of-way and do not penetrate the earth to a depth of more than twelve (12) inches and are carried out with reasonable care so as to protect any underground facilities placed in the right-of-way. Routine maintenance activities shall be more specifically described in the rules and regulations adopted by the board; or (vii) the driving of wooden stakes by use of hand tools which do not penetrate the earth to a depth of not more than six (6) inches. The term "excavate" shall include, but not be limited to, the operations of demolition, blasting, grading, land leveling, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, jacking, wrecking, razing, rending, moving or removing any structure or other material or mass of material on or below the ground.

(j) "Excavator" means any person who engages directly in excavation.

(k) "Mark" means the use of stakes, paint or other clearly identifiable materials to show the field location of underground facilities in accordance with the current color code standard of the American Public Works Association, or the uncovering or exposing of underground facilities so that the excavator may readily see the location of same, or the pointing out to the excavator of certain aboveground facilities such as, but not limited to, manhole covers, valve boxes and pipe and cable risers, which indicate the location of underground facilities.

(*l*) "Mechanical excavating equipment" means all equipment powered by any motor, engine, or hydraulic or pneumatic device used for excavating and shall include, but not be limited to, trenchers, bulldozers, backhoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows and other plowing-in or pulling-in equipment.

(m) "Mississippi 811, Inc." means a nonprofit corporation organized under the laws of the State of Mississippi that provides a service through which a person shall notify the operator(s) of underground facilities of plans to excavate and request marking of facilities.

(n) "Mississippi One-Call System, Inc." means "Mississippi 811, Inc." Whenever the term "Mississippi One-Call System, Inc." appears in this chapter, the term shall mean "Mississippi 811, Inc."

(o) "Operator" means any person who owns or operates a utility. However, the term "operator" shall not include any railroad or the Mississippi Department of Transportation.

(p) "Person" means any individual, firm, partnership, association, trustee, receiver, assignee, corporation, entity, limited liability company, utility, joint venture, municipality, state governmental unit, subdivision or instrumentality of the state, or any legal representative thereof.

(q) "Pipeline Safety Division" means the Pipeline Safety Division of the Public Service Commission.

(r) "Positive response information system" or "PRIS" means an automated information system operated and maintained by Mississippi 811, Inc., that allows excavators, locators, facility owners or operators, and other affected parties to enter and/or determine the status of a locate request.

(s) "Underground facility" means any underground utility lines and other items which shall be buried or placed below ground or submerged for use in connection with underground utility lines and including, but not be limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, vaults, attachments and those portions of poles below the ground.

(t) "Underground utility lines" means underground or buried cable, conduit pipes and related facilities for transportation and delivery of electricity, telecommunications (including fiber optics), water, sewage, gas, mixtures of gases, petroleum, petroleum products or hazardous, flammable, toxic or corrosive liquids.

(u) "Utility" means any person who supplies, distributes or transports by means of underground utility lines or underground facilities any of the following materials or services: gas, mixture of gases, petroleum, petroleum products or hazardous, toxic, flammable or corrosive liquids, electricity, telecommunications (including fiber optics), sewage, drainage, water, steam or other substances.

(v) "Working day" means a twenty-four-hour period commencing from the time the locate request is processed or entered into the system by Mississippi 811, Inc., in accordance with this chapter, excluding Saturdays, Sundays and legal holidays.

HISTORY:

Laws, 1985, ch. 494, § 2; Laws, 1997, ch. 483, § 1; reenacted without change, Laws, 1999, ch. 302, § 2; Laws, 2008, ch. 497, § 1; Laws, 2009, ch. 382, § 1; Laws, 2010, ch. 427, § 1; Laws, 2014, ch. 354, § 1; Laws, 2015, ch. 309, § 1; Laws, 2016, ch. 490, § 1, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 490, § 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2016, except for Section 2 of this act [codified as Section 77-13-27] which shall take effect and be in force from and after January 1, 2017."

§ 77-13-5. Excavator's investigation of site; notice to utility of planned excavation.

(1) In addition to complying with all other applicable regulations and requirements of federal, state, county and municipal authorities, no person shall engage in excavation of any kind, before meeting the notification requirements of this chapter. Under this chapter the excavator shall:

(a) Inform himself/herself of the presence and location of any underground utility lines and underground facilities in or near the area where excavation is to be conducted;

(b) Plan and conduct the excavation to avoid or minimize interference with or damage to underground utility lines and underground facilities in or near the excavation area; maintain a clearance between any underground utility line or underground facility and the cutting edge or point of any mechanical excavating equipment, taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary to avoid damage to such facility; and provide such support for underground utility lines or underground facilities in and near the excavation area, including during any backfilling operations, as may be reasonably necessary for the protection of such facilities.

(c) Except as provided in Section 77-13-11, provide not less than two (2) and not more than ten (10) working days' advance written, electronic or telephonic notice of the commencement, extent, location and duration of the excavation work to Mississippi 811, Inc., so that Mississippi 811, Inc., operator(s) may locate and mark the location of underground utility lines and underground facilities in the excavation area.

The written, electronic or telephonic notice required by this paragraph (c) shall contain the name, address and telephone number of the person filing the notice of intent, the person responsible for the excavation, the starting date, anticipated duration, type of excavation to be conducted, the location of the proposed excavation and whether or not explosives are to be used.

(2) The markings provided by operators and the locate request number shall only be valid for a period of fourteen (14) calendar days from the date and time the locate request ticket is processed or entered into the system by Mississippi 811, Inc. The person responsible for the excavation project shall renew the notification with Mississippi 811, Inc., at least two (2) and not more than three (3) working days prior to this expiration date and shall continue to renew such notification in the same manner throughout the duration of the excavation. Such renewal notice shall be valid for a period of fourteen (14) calendar days from the date and time the renewal locate request is processed or entered into the system by Mississippi 811, Inc.

(3) Compliance with the notice requirements of this section shall not be required of: (a) persons plowing less than twenty-four (24) inches in depth for agricultural purposes; (b) persons who are moving or otherwise displacing, by hand, earth, rock or other material or mass of material on or below the ground at a depth of less than twelve (12) inches on property they own; and (c) persons, other than the property owner, who are moving or otherwise displacing, by hand, earth, rock or other material or mass of material on or below the ground at a depth of less than twelve (12) inches, except when such excavation is in a clearly marked underground facility right-of-way.

(4) A person may make a written, electronic or telephonic design information request to Mississippi 811, Inc., so that owners and operators of utilities may locate underground utility lines and underground facilities in the design information area. The design information request shall contain the name, address, and telephone number of the person making the request, the type of project planned, and a description of the area to be located with sufficient particularity to enable the utility owner or operator to ascertain the precise tract or parcel of land involved.

HISTORY:

Laws, 1985, ch. 494, § 3; Laws, 1997, ch. 483, § 2; reenacted without change, Laws, 1999, ch. 302, § 3; Laws, 2008, ch. 497, § 2; Laws, 2015, ch. 309, § 2; Laws, 2016, ch. 490, § 9, eff from and after July 1, 2016.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error at the end of the first sentence in (1) substituting "this chapter" for "this act." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1)(c) by substituting "Mississippi 811, Inc." for "Mississippi 811 System, Inc." the second time it appears. The Joint Committee ratified the correction at its August 17, 2015, meeting.

Editor's Notes —

Laws of 2016, ch. 490, § 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2016, except for Section 2 of this act [codified as Section 77-13-27] which shall take effect and be in force from and after January 1, 2017."

Cross References —

Notice to utility of damaged lines, see § 77-13-7.

Utility's timely marking of location of underground facilities, see § 77-13-9.

Notice requirement in emergencies, see § 77-13-11.

Advance notice relieving excavators of certain liabilities, see § 77-13-13.

Notice to one-call system, see § 77-13-15.

RESEARCH REFERENCES

Am. Jur.

26 Am. Jur. 2d, Electricity, Gas, and Steam §§ 227, 232.

CJS.

29 C.J.S. Electricity § 121.

38A C.J.S. Gas § 156, 157.

§ 77-13-7. Notification of damaged lines.

(1) Each person responsible for any excavation that results in damage to an underground utility line or underground facility, immediately upon discovery of such damage, shall notify Mississippi 811, Inc., and notify all operators of such damaged line or facility of the location of the damage and shall allow the operator reasonable time to accomplish any necessary repairs before completing the excavation in the immediate area of the damage to such line or facility.

(2) Each person responsible for any excavation that results in damage to an underground pipeline or underground facility permitting the escape of any hazardous, flammable, toxic or corrosive gas or liquid shall, immediately upon discovery of such damage, call 911 and then notify Mississippi 811, Inc., and the operator and take other action as may reasonably be necessary to protect persons and property and to minimize the hazards, until arrival of the operator's personnel and the police or fire departments.

(3) Except where the excavator has fully complied with the provisions of Section 77-13-5 and subsections (1) and (2) of this section, each person responsible for excavation that results in damage to an underground line or underground facility, except the property owner, unless the property owner is the excavator, shall be responsible for any and all costs and expenses incurred by the operator in restoring, correcting, repairing or replacing the damaged line or facility.

HISTORY:

Laws, 1985, ch. 494, § 4; Laws, 1997, ch. 483, § 3; reenacted without change, Laws, 1999, ch. 302, § 4; Laws, 2008, ch. 497, § 3; Laws, 2009, ch. 382, § 2; Laws, 2016, ch. 490, § 8, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 490, § 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2016, except for Section 2 of this act [codified as Section 77-13-27] which shall take effect and be in force from and after January 1, 2017."

Cross References —

Notice in advance of excavation, see § 77-13-5.

Notice to one-call system, see § 77-13-15.

§ 77-13-9. Marking location of underground facilities; timeliness.

(1) Every person owning or operating underground utility lines or underground facilities shall, upon receiving advance notice of the commencement of excavation, in accordance with Section 77-13-7, make an investigation, and may report through the use of the PRIS the status of the work performed, within two (2) working days from the time notice is provided in accordance with this chapter to Mississippi 811, Inc., to determine the approximate location of its underground utility lines or underground facilities in the area of the proposed excavation, and shall either: (a) mark the approximate location of underground utility lines and underground facilities in or near the area of the excavation, so as to enable the person engaged in excavation work to locate the lines and facilities in advance of and during the excavation work; (b) advise in writing or by telephone or electronic means that it has no underground utility lines or underground facilities in the excavation area; or (c) advise in writing or by telephone or electronic means that it can locate its underground utility lines or underground facilities in the excavation area only by excavation. If an operator can locate its underground utility lines or underground facilities in the excavation area only by excavation and has given proper notice of such, that operator shall be allowed a reasonable amount of additional time, not to exceed four (4) working days from the day the original notice was provided in accordance with this chapter, to mark the approximate location of the underground utility lines or underground facilities.

(2) In lieu of such marking, the operator may request to be present at the site upon commencement of the excavation, so long as the operator complies within two (2) working days of the receipt of the notice.

(3) When an excavator, upon arriving at an excavation site, sees evidence of unmarked underground utility lines or underground facilities or encounters an unmarked underground utility line or underground facility on an excavation site after excavation has commenced where notice of intent has been made in accordance with the provisions of this chapter, that excavator must immediately contact Mississippi 811, Inc. All operator(s) thus notified must contact the excavator within four (4) hours and inform the excavator of any of their known underground facilities, active or abandoned, at the site of the excavation.

(4) When marking the approximate location of the facilities, the operator shall follow the color code designated and described herein, unless otherwise provided for by specific administrative rule or regulation promulgated pursuant to this chapter, namely:

UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
Electric	Safety Red
Petroleum Product/Hazardous/ Flammable/Corrosive/Toxic Materials, Product and Steam Lines, Gas or Gaseous Material	High Visibility Safety Yellow

UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
Telecommunications (including fiber optics) and CATV	Safety Alert Orange
Potable Water	Safety Precaution Blue
Reclaimed Water, Irrigation, Slurry Lines	Purple
Sewer and Drain Lines	Safety Green
Temporary Survey Markings	High Visibility Pink
Proposed Excavation	White

(5) All utility facilities installed by owners or operators of utilities on or after January 1, 2010, shall be installed in such manner that the utility facility may be located by using a generally accepted electronic locating method.

(6) Except for emergency excavations, if, before the expiration of the two (2) working days' waiting period, all identified facility owners or operators have responded to the locate request and all have indicated that their facilities are either not in conflict or have been marked as indicated through the use of the PRIS, then the person planning to perform excavation or blasting shall be authorized to commence work, subject to the other requirements of this section, without waiting the full two (2) working days.

(7) Upon receiving a design information request, the utility owner or operator shall within seven (7) working days from the time notice is provided in accordance with this chapter to Mississippi 811, Inc., respond by one (1) of the following methods: (a) marking the approximate location of its underground utility lines and underground facilities in the area in accordance with subsection (1) of this section; (b) providing to the person making the design information request the best available description of its underground utility lines and underground facilities in the area which may include drawings or other records maintained by the utility owner or operator; or (c) allowing the person making the design information request or any other authorized person to inspect or copy the drawings or other records for all underground utility lines and utility facilities in the area.

HISTORY:

Laws, 1985, ch. 494, § 5; Laws, 1997, ch. 483, § 4; reenacted without change, Laws, 1999, ch. 302, § 5; Laws, 2008, ch. 497, § 4; Laws, 2009, ch. 382, § 3; Laws, 2010, ch. 427, § 2; Laws, 2015, ch. 309, § 3; Laws, 2016, ch. 490, § 10, eff from and after July 1, 2016.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentences of (1), (3) and (4), substituting "this chapter" for "this act" in each sentence. The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor's Notes —

Laws of 2016, ch. 490, § 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2016, except for Section 2 of this act [codified as Section 77-13-27] which shall take effect and be in force from and after January 1, 2017."

Cross References —

Notice in advance of excavation, see § 77-13-5.

PRIS defined, see § 77-13-3.

§ 77-13-11. Exceptions to advance notice requirement.

(1) The advance notice provisions of this chapter shall not apply to any

person making an excavation at times of emergency involving danger to life, health or property or a customer service outage. However, every person who shall engage in such emergency excavation shall take all necessary and reasonable precautions to avoid or minimize interference with or damage to existing underground utility lines and underground facilities in and near the excavation area, and shall notify as promptly as reasonably possible the operators of underground utility lines or underground facilities in and near the emergency excavation area specifically designating whether such excavation is an emergency excavation as defined herein. In the event of damage to or dislocation of any underground utility lines or underground facilities caused by any such emergency excavation work, the person responsible for the excavation shall immediately notify the operator of the damaged or dislocated underground facilities of the damage or dislocation.

(2) An imminent danger to life, health, property or customer service exists whenever there is a substantial likelihood that injury, loss of life, health or customer services, or substantial property loss could result before the person responsible for the excavation or demolition can fully comply with the notification and response procedures required in Sections 77-13-7 and 77-13-17.

HISTORY:
Laws, 1985, ch. 494, § 6; Laws, 1997, ch. 483, § 5; reenacted without change, Laws, 1999, ch. 302, § 6, eff from and after July 1, 1999.

Cross References —
General requirement of advance notice of excavation see § 77-13-5.

Notice to utility of damaged lines, see § 77-13-7.

Advance notice as relieving excavator of certain liabilities, see § 77-13-13.

§ 77-13-13. Advance notice as relieving excavator of certain liabilities.

The act of giving notice in accordance with Section 77-13-5 shall relieve the notifying party of all liability to a utility should such notice be ignored or the information provided by the utility subsequent to said notice be materially inaccurate; provided, however, the act of giving advance notice and/or obtaining information as required by this chapter shall not relieve any person making excavations from doing so in a careful and prudent manner, nor shall it relieve such person from liability for any injury or damage proximately resulting from his/her negligence.

HISTORY:
Laws, 1985, ch. 494, § 7; reenacted without change, Laws, 1999, ch. 302, § 7, eff from and after July 1, 1999.

Cross References —
Advance notice by excavators of excavation near underground facility, see § 77-13-5.

Exception to advance notice requirement, see § 77-13-11.

§ 77-13-15. Notice to one-call system.

Notification to Mississippi One-Call System, Inc., as provided in Section 77-13-5, may be effected by giving notice to Mississippi One-Call System, Inc., in writing, by telephone, fax or other electronic means made available through Mississippi One-Call System, Inc.

HISTORY:

Laws, 1985, ch. 494, § 8; Laws, 1997, ch. 483, § 6; reenacted without change, Laws, 1999, ch. 302, § 8; Laws, 2008, ch. 497, § 5, eff from and after July 1, 2008.

Editor's Notes —

Section 77-13-3 provides that the term "Mississippi One-Call system shall mean "Mississippi 811, Inc."

Cross References —

Definitions applicable to this chapter, see § 77-13-3.

Requirement that excavator give advance notice of excavation, see § 77-13-5.

Requirement that excavator give notice of damaging line, see § 77-13-7.

§ 77-13-17. Operator responsibilities.

(1) Any operator who fails to follow, abide by or comply with this chapter shall be responsible for the cost or expense the excavator shall incur as a direct result of the failure of the operator to follow, abide by or comply with the provisions of this chapter.

(2) Operators who have underground utility lines or underground facilities within the State of Mississippi shall be a member of Mississippi 811, Inc.

(3) The person giving notice of the intent to excavate to Mississippi 811, Inc., shall be furnished an individual locate request number for each notification and, upon request, shall be furnished the names of the operators to whom the notification will be transmitted.

(4) An adequate record of all notifications shall be maintained by Mississippi 811, Inc., in order to document timely compliance with this chapter. These records shall be retained for a period of not less than four (4) years and shall be made available at a reasonable cost upon proper and adequate advance request.

(5) The services of Mississippi 811, Inc., will be provided on working days as defined in Section 77-13-3(h) at least between the hours of 7:30 a.m. and 5:00 p.m.

(6) Mississippi 811, Inc., will voice-record the notification telephone calls and after-hour calls will at least reach a voice recording which explains emergency notification procedures.

(7) All operators shall provide Mississippi 811, Inc., the following information:

(a) A list of counties, cities and towns in which the operator has underground utility lines or underground facilities in each county.

(b) A digital map, paper map or geospatial information showing the location of the operator's underground utility lines or underground facilities or for other reasons wish to receive notification of proposed excavation.

(c) An update on an annual basis of each operator's underground utility lines or underground facilities for the State of Mississippi.

HISTORY:
Laws, 1997, ch. 483, § 7; reenacted without change, Laws, 1999, ch. 302, § 9; Laws, 2008, ch. 497, § 6; Laws, 2015, ch. 309, § 4, eff from and after July 1, 2015.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence of (4), substituting "this chapter" for "this act." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Cross References —
Operator suffering damages as result of failure to participate as member of Mississippi 811, Inc., waives right to recover damages to operator's underground facilities from excavator who complied with provisions of this chapter, see § 77-13-23.

§ 77-13-19. Enforcement; injunctions.

In addition to any other rights and remedies which a person may have, any person shall have the right to resort to and apply for injunctive relief, both temporary and permanent, in any court of competent jurisdiction to enforce compliance with the provisions of this chapter and to restrain and prevent violations and threatened violations thereof.

HISTORY:
Laws, 1997, ch. 483, § 8; reenacted without change, Laws, 1999, ch. 302, § 10, eff from and after July 1, 1999.

§ 77-13-21. Repealed.

Repealed by Laws of 1999, ch. 302, § 11, eff from and after July 1, 1999. [Laws, 1997, ch. 483, § 9, eff from and after July 1, 1997]

Editor's Notes —
Former § 77-13-21 related to repeal of Sections 77-13-1 through 77-13-15.

§ 77-13-23. Operator waives right to recover damages to operator's underground facilities under certain circumstances; exemption.

Any operator who suffers damages as a result of not participating as a member of Mississippi 811, Inc., waives the right to recover damages to the operator's underground facilities from the excavator if the excavator complied with the provisions of this chapter. The provisions of this section shall not apply to any municipality, as defined in Section 17-1-1, that owns or operates a utility.

HISTORY:
Laws, 2010, ch. 427, § 3, eff from and after passage (approved Mar. 24, 2010).

§ 77-13-25. Effect of chapter on certain contracts between railroads and owners or operators of underground facilities or utility lines on railroad right-of-way.

Nothing in this chapter shall modify or abrogate any contractual provision entered into between any railroad and any other party owning or operating an underground facility or underground utility lines within the railroad's right-of-way.

HISTORY:
Laws, 2014, ch. 354, § 2, eff from and after July 1, 2014.

§ 77-13-27. Enforcement of damage prevention

(1) Any person, whether excavator or operator, who violates this chapter, or the rules or regulations promulgated under this chapter, shall be subject to a civil penalty as follows:

(a) For a first violation, the violator shall complete a course of training concerning compliance with this chapter as determined by the executive committee;

(b) For a second violation occurring within a five-year period, the violator shall complete a course of training concerning compliance with this chapter as determined by the executive committee or pay a civil penalty in an amount set by the executive committee, not to exceed Five Hundred Dollars ($500.00) per incident, or both;

(c) For a third or subsequent violation occurring within a five-year period, the violator shall pay a civil penalty in an amount set by the executive committee, not to exceed Two Thousand Five Hundred Dollars ($2,500.00) per incident; and

(d) Notwithstanding this subsection and subsection (2) of this section, if any violation was the result of gross negligence or willful or wanton misconduct as determined by the executive committee, the executive committee shall require the violator to complete a course of training concerning compliance with this chapter as determined by the executive committee and pay a civil penalty in an amount set by the executive committee, not to exceed Five Thousand Dollars ($5,000.00) per incident.

(2) Any person who is required to complete a course of training under subsection (1) of this section shall be responsible for paying for the cost of the training. For those instances in which training is ordered, if the person is a firm, partnership, association, corporation, limited liability company, joint venture, department or subdivision of the state or other governmental entity or any other body or organization, the executive committee may require that at least one (1) manager or supervisor thereof attend any such training.

(3) Any excavator who violates this chapter may be required to cease work on any excavation, or not start a proposed excavation, until the excavator complies with this chapter.

HISTORY:
Laws, 2016, ch. 490, § 2, eff from and after Jan. 1, 2017.

Editor's Notes —
Laws of 2016, ch. 490, § 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2016, except for Section 2 of this act [codified as this section] which shall take effect and be in force from and after January 1, 2017."

§ 77-13-29. Underground Facilities Damage Prevention Board.

(1) There is created an Underground Facilities Damage Prevention Board for the purpose of enforcing this chapter.

(2) It is the intent of the Legislature that the board and its enforcement activities not be funded by appropriations from the state budget.

(3) The Pipeline Safety Division will provide administrative, investigative and legal support for the board as deemed necessary and approved by the board. The Pipeline Safety Division shall charge to the board the expenses associated with the administration, investigative and legal duties requested by the board.

(4) The board shall be composed of sixteen (16) members and all board appointments shall be made on or before July 31, 2016, as follows:

(a) The President of Mississippi 811, Inc., or his designee;

(b) One (1) representative of the telecommunications industry, appointed by the Governor;

(c) One (1) representative of the excavation, utility and/or site construction industry, appointed by the Lieutenant Governor;

(d) One (1) representative of the electric power industry investor-owned utilities, appointed by the Governor;

(e) One (1) representative of the Electric Power Associations of Mississippi, appointed by the Lieutenant Governor;

(f) The Executive Director of the Mississippi Department of Transportation, or his designee;

(g) One (1) representative of the cable industry appointed by the Governor;

(h) One (1) representative of the Pipeline Safety Division, serving as an ex officio, nonvoting member;

(i) One (1) representative of the natural gas or liquid transmission industry, appointed by the Lieutenant Governor;

(j) One (1) representative of the natural gas or liquid distribution industry, appointed by the Lieutenant Governor;

(k) The Executive Director of the Mississippi Association of Professional Surveyors, Inc., or his designee;

(*l*) The Executive Director of the Mississippi Association of Supervisors, or his designee;

(m) The Executive Director of the Mississippi Municipal League, or his designee;

(n) The Executive Director of the Mississippi Homebuilders Association, or his designee;

(o) The Chief Executive Officer of the Mississippi Rural Water Association, or his designee; and

(p) The Executive Director of the American Council of Engineering Companies of Mississippi, or his designee.

(5) The initial term of the appointed members provided in paragraphs (b) and (c) of subsection (4) shall end December 31, 2017; the initial term of the

appointed members provided in paragraphs (d) and (e) of subsection (4) shall end December 31, 2019; and the initial term of the representatives provided in paragraphs (g), (i) and (j) of subsection (4) shall end December 31, 2021. After the expiration of the initial terms, all appointed members shall serve a term of five (5) years.

(6) The Governor shall appoint the initial chairman of the board, and the initial board shall elect other officers as the board deems necessary. The board shall meet and elect a chairman and other officers every two (2) years thereafter. The staff of Mississippi 811, Inc., shall serve as staff support for the board.

(7) The board shall meet no less than three (3) times each year, with a date and time to be set by its chairman upon at least five (5) business days' notice provided by United States mail, electronic mail or personal delivery to every board member.

(8) Eight (8) members of the board shall constitute a quorum and a majority vote of those present and voting at any meeting shall be necessary to transact business.

(9) The members of the board shall be immune, individually and jointly, from civil liability for any act or omission done or made in the performance of their duties while serving as members of the board, but only in the absence of willful misconduct.

(10) The members of the board shall serve without compensation.

(11) The board shall elect from its membership an executive committee, which shall have the exclusive authority for levying civil penalties and taking action as described in Section 77-13-27. The executive committee shall be composed of the following five (5) members of the board:

(a) One (1) member appointed from subsection (4)(c) of this section;

(b) One (1) member from a state agency or local government;

(c) One (1) member appointed from subsection (4)(b), (d), (e), (g) or (o) of this section;

(d) One (1) member appointed from subsection (4)(i) or (j) of this section; and

(e) One (1) member chosen at large from the board from any paragraph of subsection (4) of this section.

(12) A member serving on the executive committee shall be limited to two (2) consecutive one-year terms. No executive committee member may participate in a vote on any matter in which his employer is the alleged violator or has incurred damage to its facilities as a result of the alleged violation.

(13) The board and the executive committee may hold meetings and vote by telephone, television, or other electronic means.

HISTORY:

Laws, 2016, ch. 490, § 3, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 490, § 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2016, except for Section 2 of this act [codified as Section 77-13-27] which shall take effect and be in force from and after January 1, 2017."

§ 77-13-31. Powers of the board.

(1) The board has the power and authority to:

(a) Adopt a budget and promulgate rules and regulations to carry out the responsibilities of the board and the executive committee under this chapter. The board shall adopt its initial budget and promulgate its initial rules and regulations no later than December 31, 2016.

(b) Make and enter into contracts.

(2) The board shall:

(a) Through its executive committee, initiate investigations and conduct hearings as required by this section;

(b) Manage the Underground Damage Prevention Fund created by Section 77-13-35;

(c) Assess its annual operating cost to operators in an amount equal to the amount necessary to offset the cost of investigative, administrative and legal services and other costs reasonably necessary to carry out its responsibilities under this chapter. The annual operating costs shall be determined after deducting funds available from other sources, including, but not limited to, federal grants, and such annual operating costs shall be apportioned in a proportional manner based on volume of locate requests, and shall be collected by Mississippi 811, Inc., from the operators; and

(d) Subject to the availability of funding in the Underground Damage Prevention Fund created by Section 77-13-35, contract with appropriate individuals, entities or agencies to conduct training and public awareness for damage prevention.

HISTORY:

Laws, 2016, ch. 490, § 4, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 490, § 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2016, except for Section 2 of this act [codified as Section 77-13-27] which shall take effect and be in force from and after January 1, 2017."

§ 77-13-33. Investigation of complaint of violation; hearing; judicial review.

(1) The board shall develop and implement a process whereby upon receipt of a complaint of a violation of this chapter, the executive committee shall initiate an investigation of the complaint which may include a request that the Pipeline Safety Division designate an employee of the division who will investigate the complaint in accordance with this chapter and the rules adopted by the board.

(2) Any investigator acting upon request by the executive committee may issue citations for violations of this chapter in a form and manner established by the board. Any citation shall include a recommendation for the penalty to be assessed and training to be completed under Section 77-13-27.

(3) If the person to whom the citation is issued under subsection (2) of this section does not pay the citation or submit to ordered training, or both as applicable, within thirty (30) days, then the executive committee shall conduct

a hearing and issue an order which includes its findings and ordered penalties. The hearing shall be held at the time and place set forth in the citation or in a separate notice of hearing.

(4) A person aggrieved by the executive committee's order may, within sixty (60) days, seek judicial review in the form of an appeal "de novo" in the Chancery Court of the county in which the excavation occurred. If the excavation occurred in more than one (1) county, then the appeal shall be conducted in the chancery court of the county where the greatest amount of excavation referenced in the citation occurred.

(5) The person initiating a complaint of violation under this chapter shall submit to the board all information and documents in its possession related specifically to the alleged violation.

(6) Evidence of findings of fact, civil penalties, or any of the actions or proceedings pursuant to this chapter shall not be admissible in any other civil causes of action. This chapter shall not limit any person's right to pursue any additional civil remedy otherwise allowed by law.

(7) Nothing in this chapter shall grant the executive committee or the board jurisdiction over damage to utilities located above the ground.

HISTORY:

Laws, 2016, ch. 490, § 5, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 490, § 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2016, except for Section 2 of this act [codified as Section 77-13-27] which shall take effect and be in force from and after January 1, 2017."

§ 77-13-35. Underground Damage Prevention Fund.

(1) There is created an Underground Damage Prevention Fund to be administered and used by the board for the purpose of carrying out its duties under this chapter. All sources of funds collected by the board under this chapter, including, but not limited to, grants, assessments, and civil penalties collected pursuant to this chapter shall be deposited into the Underground Damage Prevention Fund. Any monies remaining in the Underground Damage Prevention Fund at the end of the fiscal year shall not revert to the General Fund, but shall remain in the Underground Damage Prevention Fund for the exclusive use of the board. The expenditure of monies in the Underground Damage Prevention Fund shall be at the discretion of the board to carry out its duties under this chapter. Excess funds shall be used for purposes related to buried utility damage prevention, including, but not limited to, public awareness programs, training and education programs for excavators, operators, line locators, and other persons to reduce the number and severity of violations of this chapter.

(2) The Pipeline Safety Division, with assistance from the board, shall apply for all grants, including those awarded by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, which may be used to fund the cost of services associated with Section 77-13-29(3), and any such grants received shall be used to pay for such services.

HISTORY:

Laws, 2016, ch. 490, § 6, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 490, § 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2016, except for Section 2 of this act [codified as Section 77-13-27] which shall take effect and be in force from and after January 1, 2017."

§ 77-13-37. Scope of authority.

Nothing in this chapter shall expand the jurisdiction of the Pipeline Safety Division or the commission in any way.

HISTORY:

Laws, 2016, ch. 490, § 7, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 490, § 11, provides:

"SECTION 11. This act shall take effect and be in force from and after July 1, 2016, except for Section 2 of this act [codified as Section 77-13-27] which shall take effect and be in force from and after January 1, 2017."

CHAPTER 15.

LOCAL NATURAL GAS DISTRICTS

Sec.
77-15-1. Board of directors of local natural gas districts.
77-15-3. Annual financial report.

§ 77-15-1. Board of directors of local natural gas districts.

(1) Notwithstanding any other provisions of law to the contrary, all local natural gas districts containing two (2) or more municipalities and nonmunicipal customers shall establish and maintain a board of directors composed of: (a) the mayors of each municipality within the district whose terms shall be concurrent with their terms of office as mayor; and (b) one (1) system-user from each county within the district, who shall not be a public official. The county system-user board members shall be elected by the system-users residing outside of a municipality, in the county in which such board member resides. In order to qualify as a candidate for election to the board, each person shall obtain, on a petition, twenty-five (25) signatures from system-users in the county in which such person resides. The signatures shall be of system-users residing outside of a municipality and the candidate shall be a system-user who resides outside of a municipality. The board shall call an election within fifteen (15) days after July 1, 1989, to be held within sixty (60) days from the date such election is called. From and after July 1, 2007, the procedures for, and conduct of, the election of board members of the district shall be held in accordance with the provisions of subsection (6) of this section. Those persons elected to the board shall serve until the next general election for supervisors and the election for such board members thereafter shall be held at the same time as the supervisor elections and the terms of such board members shall be concurrent with the terms of the supervisors. The board of directors, including any mayors who serve on the board, shall be entitled to compensation as follows: (a) the chairperson of the board shall receive Two Hundred Fifty Dollars ($250.00) per month, and (b) all other board members shall receive Two Hundred Dollars ($200.00) per month. The chairperson and vice chairperson shall be elected by and from the entire membership of the governing board at the first meeting in July of each year. The vice chairperson shall preside over meetings as the chairperson in the absence or incapacity of the chairperson. In addition, an official meeting may be called at any time by a two-thirds (⅔) proclamation by the board membership.

(2) Two (2) board municipal/county system-user board members who reside in his or her respective county, and must be customers of the district, and who must be system-users shall be appointed as follows for his or her initial term: (a) one (1) board member from the county lying in the northern section of the district, appointed by the Lieutenant Governor; and (b) one (1) board member from the county lying in the southern section of the district, appointed by the Governor. The appointed board municipal/county system-user board members may be elected public officials.

The initial terms of the two (2) municipal/county system-user board members shall begin July 1, 2005, and shall serve until June 30, 2008, and thereafter the municipal/county system-user board members, as described in this subsection (2), shall be elected by the municipal and county system-users as follows: The successors in office to the board member who was appointed from the county lying in the northern section of the district shall be elected only by the municipal and county system-users who reside in that county and not by all of the system-users in the district. The successors in office to the board member who was appointed from the county lying in the southern section of the district shall be elected only by the municipal and county system-users who reside in that county and not by all of the system-users in the district.

The municipal/county system-user board members shall be compensated as prescribed in subsection (1) of this section.

(3) All board members shall file any required statements of economic interest with the Ethics Commission as required by law. This section shall not apply to any local natural gas district which leases its distribution system to an investor-owned utility company regulated by the Public Service Commission.

(4) From and after July 1, 2004, the Board of Directors of the Chickasawhay Natural Gas District shall discontinue distribution of any of the revenues of the district to municipalities within the district.

(5) The provisions of this section shall only apply to the Chickasawhay Natural Gas District.

(6) The provisions of this subsection shall govern the procedure for, and conduct of, any election of the board of directors of the district. The board may adopt any rules and regulations pertaining to the election of the board of directors of the district that are not inconsistent and do not conflict with the provisions of this subsection.

(a) Notice of the election of one or more members of the board of directors shall be sent by regular United States mail to each system-user not less than thirty (30) days and not more than sixty (60) days from the election date. The notice shall state the time, place and manner in which the system-users may vote for the board of directors.

(b) The election shall be held in a manner and according to procedures to be established by rules and regulations adopted by the board before the giving of notice of the election, and a printed copy of such rules and regulations shall accompany the notice.

(c) The rules and regulations for the conduct of the election shall include the following provisions:

(i) To qualify as a candidate, a person shall not be a public official and must be a county system-user and such person must submit to the board, not less than twenty (20) days before the election, a petition containing the signatures of twenty-five (25) system-users in the county in which the candidate resides;

(ii) Notice of the nomination of qualified candidates sent by regular United States mail to the system-users at least ten (10) days before the date of the election;

(iii) The method of voting on the date of the election shall be by personal attendance at the district's office in Waynesboro, by personal attendance at the district's office in Quitman, or by proxy;

(iv) Each system-user shall have one (1) vote, provided that when a billing for service is made to more than one (1) person at a single address or location, each such person shall be limited to casting a pro rata share of the one (1) vote to which the billing address or location is entitled; and

(v) The time of the election shall be fixed between the hours of 10:00 a.m. and 6:00 p.m. on a day of the week other than Sunday.

(d) A certified public accountant appointed by the board shall count all votes, whether cast by personal attendance or by proxy, and he shall certify the results of the election to the board within ten (10) days of the election.

HISTORY:

Laws, 1989, ch. 560, § 1; Laws, 1991, ch. 504, § 1; Laws, 2004, ch. 562, § 4; Laws, 2005, ch. 496, § 1; Laws, 2006, ch. 428, § 1; reenacted and amended, Laws, 2007, ch. 592, § 1; Laws, 2010, ch. 344, § 1, eff from and after July 1, 2010.

Editor's Notes —

Laws of 1989, ch. 560, § 3, provided that this section would stand repealed from and after July 1, 1991. Subsequently, Laws of 1991, ch. 560, § 3, amended Section 3 of Chapter 560, Laws of 1989, by removing the repeal date.

By letter dated July 18, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 592, § 1.

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§ 77-15-3. Annual financial report.

Audited financial statements shall be maintained in the office of each local natural gas district for public inspection and shall be available to the public during normal business hours.

HISTORY:

Laws, 1989, ch. 560, § 2; reenacted, Laws, 1991, ch. 504, § 2; Laws, 2009, ch. 546, § 21, eff from and after passage (approved Apr. 15, 2009).

Editor's Notes —

Laws of 1989, ch. 560, § 3, provided that this section would stand repealed from and after July 1, 1991. Subsequently, Laws of 1991, ch. 504, § 3, amended Section 3 of Chapter 560, Laws of 1989, by removing the repeal date.

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False information.
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Financing statement.
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  Regulation of public utilities, §§77-3-3, 77-3-201.
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Qualifying facilities.
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Rate reduction bonds.
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Return.
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Revenue bonds.
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Ring signaling device.
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Secured party.
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Security property.
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Telephone solicitor.
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